Class F375

Book .U58

CONDITION OF AFFAIRS IN LOUISIANA.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

IN ANSWER TO

A resolution of the House, of December 16 last, relative to the condition of affairs in Louisiana.

JANUARY 13, 1873.—Referred to the Committee on the Judiciary and ordered to be printed.

To the House of Representatives of the United States:

In answer to the resolution of the House of Representatives, of the 16th of December last, calling for information relative to the condition of affairs in Louisiana, and what, if any, action has been taken in regard thereto, I herewith transmit the report of the Attorney-General and the papers by which it is accompanied.

U. S. GRANT.

WASHINGTON, *January* 13, 1873.

U. S. DEPARTMENT OF JUSTICE,
Washington, January 13, 1873.

The Attorney-General, to whom was referred the resolution of the House of Representatives of which the following is a copy—

"*Resolved*, That the President is hereby requested, if not in his judgment incompatible with the public interest, to communicate to this House such information as he may have relative to the condition of affairs in Louisiana, and what, if any, action he has taken with regard thereto"—

Has the honor to report that a great number of oral communications have been made to him in respect to the condition of affairs in said State, the substance of which appears in the accompanying papers, which also show the action of the President upon the subject.

Respectfully submitted.

GEO. H. WILLIAMS.

The PRESIDENT.

Inclosures.

A. Miscellaneous papers.
B. Memorial of citizens protesting against recognition of present State government.
C. Answer to memorial.
D. Addresses of both parties.
E. Proceedings in State courts.
F. Proceedings in United States courts.

Exhibit A.

MISCELLANEOUS PAPERS.

Letter of United States Commissioner Jewett to the Attorney-General.

Minden, Webster Parish, Louisiana,
November 11, 1872.

Dear Sir: Presuming that the circumstances attending the late election in Louisiana will attract the attention of the Cabinet and of Congress, I wish to call attention to the fact that the K. K. K. has been perfectly re-organized in this part of the country; that its aims are the same as in 1868, and that the means by which it purposes to attain them are the same.

In all this portion of Northern Louisiana the Klan, acting ostensibly as constabulary, under the commission of Governor Warmoth, carried the election by pure and open force. No disguise was attempted or deemed necessary. In all the parishes many outrages were committed before election—in all but this parish on the day of election. In all threats and intimidation were extensively used, and in Jackson Parish Colonel Allen Greene and his son were shot at the polls for the high offense of attempting to vote the national republican ticket. In this parish one negro has been murdered since election, and the house of one white republican was attacked and fired into on Saturday night last. I ought to issue warrants for the arrest of numerous parties against whom I hold affidavits, and have been requested to enforce the law. Were I to attempt doing what is my sworn duty, it would be the signal for the death of myself and of every white republican in this and neighboring parishes. The people of Webster and Bossier Parishes openly boast that the Army of the United States cannot enforce the acts of Congress in these parishes. This is of course pure gasconade, but after earnest deliberation I have felt it my duty to call upon United States Marshal Packard to put at the disposal of myself and Judge L. W. Baker, United States commissioner residing in Bossier, two hundred troops, for the enforcement of the law and the protection of our suffering and outraged people. This number will, I think, suffice, and with them I pledge the enforcement of the acts of Congress. I am not certain, however, that Mr. Packard has a sufficient number of troops at his disposal. Please interest yourself, my dear sir. I feel certain, as an old officer of his Potomac army, that my old commander will not suffer a United States magistrate to call upon him twice for means to enforce the laws, to perform the sworn duties of his office, and to protect the people, out-

raged and suffering for their loyalty, who turn to him for aid and protection.

Very truly, your obedient servant,

D. G. M. A. JEWETT,
United States Commissioner.

Hon. G. H. WILLIAMS,
Attorney-General, Washington, D. C.

[Telegram.]

NEW ORLEANS, *November* 16, 1872.

Attorney-General GEORGE H. WILLIAMS:

Requisition was made by chief supervisor for troops and referred to General Emory to learn desire of Government. State court enjoined Warmoth's new canvassing board, but disregarded. United States circuit court has to-day restrained Warmoth and his canvassing board from canvassing vote pending trial of rule for injunction fixed for Tuesday. Enforcement law has been defied by over half Warmoth's election officers. United States commissioner has already issued warrants for many of them, which have been executed.

S. B. PACKARD,
United States Marshal.

Letter of Hon. William P. Kellogg to Attorney-General.

NEW ORLEANS, *November* 27, 1872.

DEAR SIR: In view of the fact that complications may arise at no remote period when you may be called upon to advise the President regarding matters here, I have thought it best to make a brief statement of the condition of affairs.

Under the election law of the State controlling the last election, the governor appoints all the supervisors of registration upon the nomination of the State supervisors of registration. In many of the parishes some of the worst characters were appointed. In several the appointees were sent from the city of New Orleans.

In some eleven or twelve parishes a new registration was ordered, on the grounds that the geographical limits of the parishes had been changed. In two or three others a new registration was ordered, on the pretense that the old registration-lists had been lost or destroyed. This was notably the case in East Baton Rouge, where we are entitled to a majority of twelve or fourteen hundred. Here the books were last seen in the clerk's office, but were spirited away and a new registration ordered, resulting in the registration of all the whites and the non-registration of at least one-half the blacks. Here every principle of justice was openly set at defiance by a notorious and irresponsible character who was appointed supervisor.

Discovering that in most of the parishes where a new registration was ordered every effort was being put forth to prevent our people from obtaining registration, we procured to be printed large numbers of the affidavits inclosed and marked A.

At a later period of the canvass, and for the purpose of giving our people who were registered and who might be refused the right to vote,

we caused to be printed large numbers of the affidavits, also inclosed, marked B, both of which were scattered in large numbers through the different parishes of the State.

The chief supervisors of the State sent instructions, marked confidential, a few days before the election, to the different supervisors of the city and State, a copy of which I also inclose, marked C. I inclose, also, an opinion of the United States district attorney, and of the attorney-general of the State regarding these instructions, marked D.

The State law provides that the supervisor of registration in each parish and the State supervisor in this parish of Orleans may designate the supervisors of election. It also provides that he may designate the number of polling-places to be opened for the accommodation of voters in the parish or ward. In the city the polling-places were not published until Sunday morning, the day before the election, and then a complete list was not published, several new polls being opened on Monday morning, of which our friends were ignorant, and at which they were, consequently, unable to place supervisors until late in the day.

In the parishes a deliberate plan was entered into by the supervisors by which few polling-places were designated, and those at remote points, but where the whites could more easily reach them. For instance, in the parish of Natchitoches, where we are entitled to 1,800 majority under a fair registration, and where, under the new registration, we were enabled, by our colored and white republicans persistently following the registrar from day to day, to register a sufficient number to have given us eight hundred or a thousand majority; the supervisor of registration designated only four polls; one in the town of Natchitoches, one in the extreme south portion of the parish, and one in the northeast portion of the parish, and one in the northwest portion. The two last-named were at almost inaccessible points; one among the pine-hills, as they were termed, and the other upon an island surrounded by lakes and bayous. No notice whatever was given of these polling-places to the republicans, until the morning of election. In the town of Nachitoches, where only one poll was opened, and where the blacks for a radius of eight or ten miles congregated, believing that, of course, there would be polls there, when the polls closed, five hundred and eighty republicans, nearly every one colored, were in line, with the ballots and their registration-papers in their hands, struggling to get an opportunity to vote, which was denied them by the closing of the poll. These men, together with some eight or nine hundred others, in the same parish, all made affidavit in accordance with the forms inclosed, and which are now filed in the circuit court.

A similar course was pursued in Rapides and other parishes. In Rapides we are entitled to at least fifteen hundred majority. In other parishes, like Caddo, where we were entitled to at least ten or twelve hundred majority, the ballot-boxes from two or three remote polls were entirely replaced by boxes prepared with stuffed tickets. All this is susceptible of proof.

I omitted to mention that, under the law, all boxes are to be brought from the different polls in the parish to the office of the supervisor of registration, which is usually the court-house. In this city all the boxes were carried by the State supervisor of registration to the Mechanics' Institute, which he designated as his office, and where the counting of votes was continued for nearly two weeks, amid a constant struggle on the part of the Federal supervisors, appointed in the interests of the republican party, and also on the part of the reform party of this city, with the State supervisors, who on their side, day after day and night

after night, did their utmost, by substituting ballots, by false counts, and by every conceivable maneuver to prevent a fair count. Any amount of conclusive evidence can be procured to show all this, and to show, furthermore, that some twenty-five or twenty-six ballot-boxes were stuffed in this city on the day of election before they reached the Mechanics' Institute.

In one case in the parish of Jefferson, at Camp Parapet, a suburb of the city, at a certain poll, there were nearly five hundred republican votes cast and only twenty democratic. The commissioners refused to allow the United States supervisors to remain in sight of the box; and when the box reached the court-house, a distance of five or six miles, it was found that another box had been substituted for the one in which the votes had been cast, and that there were only two republican votes in the box. This fraud was so apparent that even the State supervisor himself acknowledges it. Still these votes were counted and returned. This case can be shown so conclusively that indeed no one denies it; but it has heretofore been treated by those who perpetrated the fraud as a good joke. I could give you many instances of this kind.

In the parish of Madison, opposite Vicksburgh, the supervisor who was sent from this city, a miserable character, refused to count but a small portion of the vote, destroyed all the ballots, and ran across into Mississippi to Vicksburgh, took the cars to this city, making out his returns here, giving Grant and myself about four hundred majority, when we can prove by hundreds of witnesses, white and black, that we received at least fifteen hundred majority of the actual votes polled on the day of election.

The registration law of the State under which the election was held provides for a board of canvassers, consisting of the governor, the lieutenant-governor, the secretary of state, and the members of the state senate, John Lynch and S. C. Anderson.

Notwithstanding all these frauds some of the largely republican parishes, giving very heavy majorities for the republican ticket, and General Grant and myself running far ahead of our ticket in the city, it became evident that we would have a reported majority should the board of canvassers be disposed to give us a fair canvass, as John Lynch and the secretary of state, General Herron, were northern men and republicans, and as the lieutenant-governor, Mr. Pinchback, and Mr. Anderson were disqualified, by reason of being candidates, consequently the governor took measures to break up this board. The details of his action in this respect you are probably familiar with; if not some of our members of Congress who have just left for Washington will post you fully.

This movement of Warmoth's was followed up by his commissioning several of the candidates for judgeships in the city of New Orleans and forcibly ejecting the sitting judges from the bench, all this before the result of the official canvass had been declared. The supreme court of the State has since refused to recognize any of the commissions so issued. The election law of the State provides that any vacancy occurring in the board of canvassers may be filled by the majority of the remaining members. On the disqualification of Pinchback, and Anderson Lynch, and Heron, two out of the three remaining members filled the vacancies by appointing Judge Jacob Hawkins and General James Longstreet.

Governor Warmoth meanwhile formed a board of his own, and the case was carried into the eighth district court, a court having exclusive jurisdiction of such cases in the parish of Orleans. By this court (previous to the forcible removal of district judges as above mentioned) Governor

Warmoth and his board of canvassers were enjoined and the injunction made perpetual. An application for an injunction against the regular board applied for by Governor Warmoth before the same court was refused.

Immediately after the rendering of these decisions Governor Warmoth approved a bill passed by the last legislature shortly before their adjournment, and which has been in his hands ever since, providing for a canvassing board of the same number of persons as formerly, but providing that they shall be elected by the senate.

While these things were transpiring it became evident that the returns were being held back in the country, and the majorities in some of the democratic parishes increased over the amount first authentically reported by both our own supervisors and the State supervisor; that returns which had come in from several of the parishes were being mutilated and changed, and upon application made by me to the United States circuit court, an injunction was issued. I inclose herewith a copy of the bill, marked E. This application is being now elaborately argued before the court, and I am of opinion that the court will maintain its jurisdiction. So audacious and flagrant have been the means resorted to within the last few days by Governor Warmoth, (and which are in great part kept from the northern public by reason of the democratic proclivities of the agent of the associated press, and the peculiar relations of most of the newspaper correspondents with the governor,) that I should not be surprised to see the supreme court of the State, which is known to sympathize with us, and which has incidentally passed upon the legality of our returning-board and the illegality of the action of Warmoth in issuing commissions before the result of the election is declared according to law, ejected from their seats by force, notwithstanding that the constitution provides they can only be removed by impeachment.

In the mean time Governor Warmoth has called an extra session of the legislature, and it is believed by many for the purpose of having the result of the recent election declared in favor of the democratic party, the supreme judges impeached, (unless previously forcibly removed,) and measures taken to stamp out the last vestige of republicanism in the State; thus effecting what I, in common with many of those who have heretofore been Warmoth's firm friends, believe to have been his deliberate intention for more than two years.

Should the United States circuit court, in passing upon the question of contempt of its orders by Governor Warmoth, which is carried along with the main case, decide against him, and should it further issue its mandates in aid of what we believe to be the right in the controversy, the following may result:

Our returning-board being held as the legal returning-board, and as in nowise affected by the promulgation of the recent election bill, may make the returns required by law, which will show the republican State ticket elected, and a republican majority in the legislature; and on the 9th of December, when the legislature convened by Governor Warmoth meets in extra session, a conflict may ensue.

I have thought it best to make a statement of the facts, so that you may be advised in any contingency likely to arise.

I ought to mention that the supreme court will next Monday pass upon the case of Bovee, ejected, over a year ago, from the office of secretary of state, by Governor Warmoth, without any legal right or showing. They will reinstate him in the office to which he was elected by the people, and from which he was illegally displaced by Governor

Warmoth. Under the State election law the returns of the canvassing board come to the secretary of state, and he makes a return of the members elected to the legislature to the secretary of the senate and the clerk of the house, who are both republicans. You will at once appreciate the full effect of this point.

It is impossible to state, at this time, to what extent there may be danger of collision, but, if it should be apparent that a conflict will result, it seems to me that General Emory should be instructed to exercise a discretion in having troops in the vicinity of the capitol on that day.

I can readily understand the delicacy of the President's position in this matter; but it must not be forgotten that this is a systematic and organized attempt to destroy the republican party in this State, to outrage every principle of justice, to override all constitutional and legal restraints, and to inaugurate a condition of things that will jeopardize the peace of the community and the security, hereafter, of the black as well as the white republicans of the city and State.

I say to you frankly that this fight is extremely distasteful to me, and I would be glad to get rid of the whole matter, but I feel bound, in the position in which I find myself, to do all I can to avert a condition of things such as will inevitably follow the accession of the democratic party to power in this State.

I, therefore, respectfully suggest that General Emory, who, I think, appreciates the necessity and sympathizes with the republican party here, be instructed to comply with any requisition that the United States courts may make upon him in support of its mandates and to preserve the peace. As at present advised, I think General Emory understands that he is to use the troops in no contingency without instructions from Washington.

I have dictated this communication very hurriedly, but although disconnected it may give you, together with the exhibits I inclose herewith, a tolerably correct idea of the situation of affairs here.

Should Mr. William E. Chandler or our members of the lower House call upon you regarding these matters, I wish you would confer with them as fully as you conveniently can.

In conclusion, let me say that, should the United States courts hold with us, and if I can count upon the co-operation and sympathy of the Federal Government, as far as it can be consistently given in aid of its firm and devoted friends in this State, who have done all they could to carry the State, and have really carried it by a large majority against organized fraud, the State may be saved to the republican party for the future; and I believe that under its auspices the State will become peaceful and prosperous, and no longer be a standing disgrace to the party and the people at large.

Very truly, yours,

WM. P. KELLOGG.

Hon. GEO. H. WILLIAMS,
Attorney-General United States.

A.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

On the —— day of October, 1872, I, Orange Smith, presented myself at the office of T. S. Brady, supervisor of registration for the parish of East Baton Rouge, located at court-house, in said parish, of the opening and establishment of which notice had

been given by the said officer, and during the legally established office hours, and offered and was prepared to perform all acts and to take all oaths by the laws made prerequisite to entitle me to registration as a voter, and was wrongfully prevented from obtaining registration by said supervisor of registration, because

[NOTE.—Here insert cause. If admitted to the office and refused, state so. If the office was closed or the applicant could not obtain admission for any other cause, state so.]

I further state that I am a citizen of the State, and for more than ten days a resident of the said parish of East Baton Rouge, and am in all things lawfully qualified and entitled to vote in said parish.

his
ORANGE + SMITH.
mark.

Signed and sworn to in presence of—
A. R. HOLT.
FELIX BERHEL.

Subscribed and sworn to this 9th day of November, 1872, before me.
GEORGE P. DAVIS,
Parish Judge.

PARISH OF EAST BATON ROUGE,
November 9, 1872.

I hereby certify that ——— ———, who has executed the foregoing affidavit, presented himself at the office of the supervisor of registration for the said parish of ———, as stated in said affidavit, and claimed the right to register, as stated, and was wrongfully prevented from obtaining registration, as set forth by him in said affidavit.

And I further certify that under the laws of this State and the United States he was and is entitled to registration.

W. G. LANE,
United States Supervisor of Election for said Parish.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

On the fourth day of November, 1872, I, Orange Smith, a duly qualified voter in the parish of East Baton Rouge, presented myself at the polling-place, located at the court-house in said parish, which had been designated by the supervisor of registration as a poll, and claimed the right to vote upon the foregoing evidence of having offered to do all acts prerequisite to entitle me to register as a voter in said parish, and of having been refused, denied, or unable to obtain registration by T. S. Brady, supervisor of registration.

I further state that I offered to the commissioner of election at said poll for deposit in the ballot-box the ballot hereunto attached, and said commissioner refused to receive said ballot, and illegally and wrongfully prevented the ballot attached from being placed in the ballot-box and counted, to the denial of my right as a citizen and legal voter. I further demand under the provisions of the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870, that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

REGULAR NATIONAL REPUBLICAN TICKET.

For President—General U. S. Grant.
For Vice-President—Henry Wilson.

PRESIDENTIAL ELECTORS.

At large—M. F. Bonzano, Jules Lanabere, Charles E. Halstead.
First district, L. C. Roudanez; second district, A. K. Johnson; third district, Milton Morris; fourth district, Joseph Taylor; fifth district, John Ray.

STATE TICKET.

Election, November 4, 1872.

For governor—William Pitt Kellogg.
For lieutenant-governor—C. C. Antoine.

For auditor of public accounts—Charles Clinton.
Secretary of state—P. G. Deslonde.
Attorney-general—A. P. Field.
Superintendent of public education—W. G. Brown.
Congress at large—P. B. S. Pinchback.
For forty-third Congress—C. B. Darrall.
For judge fifth judicial district—R. T. Posey.
For district attorney fifth judicial district—B. E. Chaney.

PARISH TICKET EAST BATON ROUGE.

For senator 13th senatorial district—J. Henri Burch.
House of representatives—C. W. Bryant, Augustus Williams, J. P. Wilson.
Parish judge—George P. Davis.
Recorder—Alexander Smith.
Sheriff—Gustave LeBlanc.
Clerk of court—Felix Berhel.
Coroner—Benjamin Morgan.
Police jurors—Leon Gaste, William Hickman, R. T. Young, O. H. Forman, Andrew Harrigan.
Justice of the peace—1st ward, Norman L. Underhill; 2d ward, Charles Doyle; 3d ward, ——— ———; 4th ward, Robert Monson; 5th ward, A. Rayburn; 6th ward, ——— ———; 7th ward, R. Young; 8th ward, Charles Spears; 9th ward, Valcour Anderson; 10th ward, ——— ———; 11th ward, E. J. Stillman; 12th ward, Alex. Ridley.
Constable—1st ward, Jules Collins; 2d ward, Alex. Gilbert; 3d ward, ——— ——— 4th ward, James Hall; 5th ward, Paris Triplett; 6th ward, ——— ———; 7th ward Philip Barrow; 8th ward, William Spears; 9th ward, Mourton Mitchell; 10th ward, ——— ———; 11th ward, Thomas Montgomery; 12th ward, Charles Newman.

his
ORANGE + SMITH,
mark

A. R. HOLT,
FELIX BERHEL.

Subscribed and sworn to this 9th day of November, 1872, before me,
GEORGE P. DAVIS,
Parish Judge.

PARISH OF EAST BATON ROUGE,
November —, 1872.

I certify that I was at the polling-place above mentioned on the day of election November 4, 1872, and that the statement of ——— ———, above subscribed to, is true in every particular.

———— ————,
United States Supervisor of Election at said Poll.

AN ACT to enforce the citizens of the United States to vote in the several States of this Union, and for other purposes.—Approved May 31, 1870.

* * * * * * *

SECTION 3. That whenever, by or under the authority of the constitution or laws of any State, or the laws of any Territory, an act is or shall be required to be done by any citizen as prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting thereon, be deemed and held as a performance in law of such act; and the person so offering and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act; and any judge, inspector or other officer of election, whose duty it is or shall be to receive, count, certify, register, report, or give effect to the vote of any such citizen, who shall wrongfully refuse or omit to receive, count, certify, register, report, or give effect to the vote of such citizen, upon the presentation by him of his affidavit, stating such offer and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall, for any such offense forfeit and pay the sum of $500 to the person aggrieved thereby, to be recovered by an action on the case,, with full costs and such allowance for counsel fees as the court shall deem

just, and shall also, for every such offense, be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than $500, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

* * * * * * *

SECTION 8. That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses committed against the provisions of this act, and also concurrently with the circuit courts of the United States, of all causes, civil and criminal, arising under this act, except as herein otherwise provided, and the jurisdiction hereby conferred shall be exercised in conformity with the laws and practice governing United States courts; and all crimes and offenses committed against the provisions of this act may be prosecuted by the indictment of a grand jury, or in cases of crimes and offenses not infamous, the prosecution may be either by indictment or information filed by the district attorney in a court having jurisdiction.

* * * * * * *

SECTION 23. That whenever any person shall be defeated or deprived of his election to any office, except elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial, and such person may bring any appropriate suit or proceeding to recover possession of such office, and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote on account of race, color, or previous condition of servitude, such suit or proceedings may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the XVth article of amendment of the Constitution of the United States and secured by this act.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

On the fourth day of November, 1872, I, Adam Anderson, a duly qualified voter in the parish of East Baton Rouge, first ward, presented myself at the polling-place, located at court-house in said parish, which had been designated by the supervisor of registration as a poll, and claimed the right to vote; that I exhibited to the commissioner of election at said poll a certificate of registration furnished me during the registration of 1870, a copy of which is attached, showing me to be entitled to vote in the aforesaid parish. I was not allowed to vote because I did not have one of T. B. Brady's registration papers.

I further state that I offered to the commissioners of election at said poll for deposit in the ballot-box the ballot hereunto attached, and said commissioners refused to receive said ballot, and illegally and wrongfully prevented the ballot attached from being placed in the ballot-box and counted, to the denial of my rights as a citizen and legal voter. I further demand, under the provisions of the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870, that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

REGULAR NATIONAL REPUBLICAN TICKET.

For President—General U. S. Grant.
For Vice-President—Henry Wilson.

PRESIDENTIAL ELECTORS.

At large—M. F. Bonzano, Jules Lanabere, Charles E. Halstead.
First district, L. C. Roudanez; second district, A. K. Johnson; third district, Milton Morris; fourth district, Joseph Taylor; fifth district, John Ray.

STATE TICKET.

Election, November 4, 1872.

For governor—William Pitt Kellogg.
Lieutenant-governor—C. C. Antoine.

For auditor of public accounts—Charles Clinton.
Secretary of State—P. G. Deslonde.
Attorney-general—A. P. Field.
Superintendent of public education—W. G. Brown.
Congress, at large—P. B. S. Pinchback.
For Forty-third Congress—C. B. Darnall.
For judge fifth judicial district—R. T. Posey.
For district attorney fifth judicial district—B. E. Chaney.

PARISH TICKET—EAST BATON ROUGE.

For senator thirteenth senatorial district—J. Henri Burch.
House of representatives—C. W. Bryant, Augustus Williams, J. P. Wilson.
Parish judge—George P. Davis.
Recorder—Alexander Smith.
Sheriff—Gustave LeBlanc.
Clerk of court—Felix Berhel.
Coroner—Benjamin Morgan.
Police jurors—Leon Gaste, Wm. Hickman, R. T. Young, O. H. Foreman, Andrew Harrigan.
Justice of the peace—First ward, Norman L. Underhill; second ward, Charles Doyle; third ward, ——— ———; fourth ward, Robert Monson; fifth ward, A. Rayburn; sixth ward, ——— ———; seventh ward, R. Young; eighth ward, Charles Spears; ninth ward, Valcour Anderson; tenth ward, ——— ———; eleventh ward, E. J. Stillman; twelfth ward, Alexander Ridley.
Constable—First ward, Jules Collins; second ward, Alexander Gilbert; third ward, ——— ———; fourth ward, James Hall; fifth ward, Paris Triplett; sixth ward, ——— ———; seventh ward, Philip Barrow; eighth ward, William Spears; ninth ward, Mourton Mitchell; tenth ward, ——— ———; eleventh ward, Thomas Montgomery; twelfth ward, Charles Newman.

A. ANDERSON.

A. R. Holt.
Felix Berhel.

Subscribed and sworn to, this 13th day of November, 1872, before me.

GEO. P. DAVIS,
Parish Judge.

Parish of East Baton Rouge,
November 4, 1872.

I certify that I was at the polling-place above mentioned on the day of election, November 4, 1872, and that the statement of ——— ———, above subscribed to, is true in every particular.

WM. G. LANE,
United States Supervisor of Election at said Poll.

[Original No. 3141.]

United States of America, State of Louisiana,
Parish of East Baton Rouge, ss:

This is to certify, that Adam Anderson, a native of the United States, and a citizen of Louisiana, was duly registered upon his personal application, by the undersigned supervisor of registration of the parish of East Baton Rouge, as a resident of the 1st police jury ward of said parish, on the 6th day of September, anno Domini 1870.

JOHN S CHAPMAN,
Supervisor of Registration for the Parish of East Baton Rouge.

United States of America,
State of Louisiana:

(In the election precinct of the parish of East Baton Rouge.)

Be it remembered that on the 6th day of September, in the year 1870, personally came before the supervisor of registration of said parish Adam Anderson, who being duly sworn, (affirmed,) doth depose and say as follows, to wit:

My name is Adam Anderson, I was born in Mississippi in the year 1830, my occupa-

tion is a blacksmith, and I reside at city Baton Rouge. I am a citizen of Louisiana, and have been residing in this State ever since the —— day of ———, 1851. I am now claiming to be registered in the election precinct of the parish of East Baton Rouge, in which I now reside. I have no other place of residence and I did not remove to the said election precinct for the purpose of voting therein, but for the purpose of making it my place of residence in pursuance of my lawful calling.

A. ANDERSON.

Sworn and subscribed to, this 6th day of September, A. D. 1870, before me.

JOHN S. CHAPMAN,
Supervisor of Registration for the Parish of East Baton Rouge.

C.

Private instructions of B. P. Blanchard, State supervisor of registration for Louisiana, issued a few days before the election.

Mr. ———, *supervisor of registration, parish of* ———:

SIR: You will please direct commissioner of election to receive no votes upon the affidavits supplied by the *radical* party under the enforcement acts, unless the person applying or offering to vote is known by them to have been wrongfully refused registration.

Respectfully,

B. P. BLANCHARD,
State Registrar of Voters.

P. S.—In case of rejection of any vote upon such affidavit, call upon respectable gentlemen present at the polls as witnesses.

[Confidential.]

Mr. ———, *supervisor of registration, parish of* ———:

In addition to the instructions contained in circular No. 8 from this office, you are instructed:

I. In counting the ballots after the election, *count first the votes cast for Presidential electors and members of Congress*, keeping separate tally-lists on the form (No. 1) provided for that purpose, and making up and completing the statement of voters for each poll, upon form No. 1; then close the box, reseal it, and proceed in a similar manner, until all the national vote has been counted. Then proceed with the counting of the State and parish votes, bearing in mind the fact that the United States supervisors of election and deputy marshals *have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish votes.*

II. As soon as the count in each case is completed telegraph the result to this office at once; should there be no telegraph office at the court-house, dispatch a messenger by the quickest route to the nearest telegraph station.

III. The stationery, &c., furnished for each parish is to be equally distributed among all the polling places, and at least *one* copy of the election laws must be furnished to each poll.

Respectfully,

B. P. BLANCHARD,
State Registrar of Voters.

D.

OFFICE CHIEF SUPERVISOR OF ELECTIONS, DISTRICT OF LOUISIANA,
New Orleans, October 30, 1872.

SIR: The following opinion of J. R. Beckwith, esq., United States attorney, district of Louisiana, as to your powers and duties as supervisor of election, is transmitted to you for your information and guidance.

Very respectfully,

[SEAL.]

F. A. WOOLFLEY,
Chief Supervisor of Elections.

To ——— ———, Esq.,
United States Supervisor of Elections.

UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF LOUISIANA,
New Orleans, October 30, 1872.

SIR: In reply to your request, that I give my opinion as to the extent of the duties required of the supervisors of election appointed under the provisions of the act of Congress, approved February 28, 1871, entitled "An act to amend an act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," and the act of Congress extending the provisions of the act, and whether at the impending election it is the right and duty of such supervisors to be present and in attendance at the polls, and to remain where the ballot-boxes are kept, at all times after the polls are open until all of the votes cast at said election are counted and the required return and certificate are made, I have the honor to state, that the acts of Congress referred to are enacted to carry out the Fifteenth Amendment of the Constitution of the United States, and that the fifth section of the act of February 28, 1871, is perfectly clear and unambiguous in its deduction of the duties of supervisors of election. They are "to be and remain where the ballot-boxes are kept, at all times, after the polls are open until each and every vote cast at said time and place shall be cast, *shall be counted, and the canvass of all votes polled be wholly completed and the proper and requisite certificate or return made, whether said certificate or return be required under any law of the United States, or any State, territorial or municipal law.*"

It cannot be doubted that the duty of the supervisors extends to the inspection of *the entire election* from its commencement until the decision of its results. If the United States statutes were less explicit, there still could be no doubt of the duty and authority of the supervisor *to inspect and canvass every vote cast for each and every candidate, State, parochial and federal*, as the law of the State neither provides nor allows any separation of the election for representatives in Congress, &c., from the election of State and parish officers. The election is in law a single election, and the power of inspection vested by law in the supervisors appointed by the court *extends to the entire election*, a full knowledge of which may well become necessary to defeat fraud.

I remain, respectfully,

J. R. BECKWITH,
United States Attorney.

F. A. WOOLFLEY, Esq.,
Chief Supervisor.

OFFICE ATTORNEY-GENERAL, STATE OF LOUISIANA,
New Orleans, October 30, 1872.

I have examined the question covered in the above opinion, and concur fully in the views expressed by United States District-Attorney Beckwith.

S. BELDEN,
Attorney-General of Louisiana.

DEPARTMENT OF JUSTICE,
December 3, 1872.

S. P. PACKARD, Esq.,
United States Marshal, New Orleans, Louisiana:

You are to enforce the decrees and mandates of the United States courts, no matter by whom resisted, and General Emory will furnish you with all necessary troops for that purpose.

GEO. H. WILLIAMS,
Attorney-General.

NEW ORLEANS, *December* 6, 1872.

President GRANT:

Marshal Packard took possession of State-house this morning at an early hour with military posse, in obedience to a mandate of circuit court, to prevent illegal assemblage of persons under guise of authority of Warmoth's returning-board in violation of injunction of circuit court. Decree of court just rendered declares Warmoth's returning board illegal and orders the returns of the election to be forthwith placed before the

legal board. This board will probably soon declare the result of the election of officers of State and legislature, which will meet in State-house with protection of court. The decree was sweeping in its provisions, and if enforced will save the republican majority and give Louisiana a republican legislature and State government, and check Warmoth in his usurpations. Warmoth's democratic supporters are becoming disgusted with him, and charging that his usurpations are ruining their cause.

JAS. F. CASEY.

[Telegram.]

NEW ORLEANS, *December* 6, 1872.

Attorney-General WILLIAMS, *Washington, D. C.:*

Returning-board provided by election of seventy under which election was held and which United States court sustains, promulgated in official journal this morning result of election of legislature: House stands seventy-seven republicans, thirty-two democratic; senate twenty-eight republicans, eight democratic. Board counted ballots attached to affidavits of colored persons wrongfully prevented from voting, filed with chief supervisor.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Returning-board has officially promulgated in official journal this morning the result of the election for State officers. Kellogg's majority eighteen thousand eight hundred and sixty-one.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Lieutenant-Governor Pinchback qualified and took possession of the governor's office to-night. Senate organized as high court of impeachment, Chief Justice Ludling presiding, and adjourned to meet Monday next. It is believed that all the democrats, members of general assembly, will qualify and take seats to-morrow.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, LOUISIANA,
December 9, 1872.

Hon. GEO. H. WILLIAMS, *Attorney-General:*

Senate, by vote of seventeen to five, have resolved into high court of impeachment. Senator Harris elected president of the senate, Lieutenant-Governor Pinchback being now governor.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 10, 1872.

Hon. GEO. H. WILLIAMS, *Attorney-General:*

Senate and house met in joint session as provided by constitution and counted vote for governor and lieutenant-governor; Kellogg and Antoine decided elected.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, LOUISIANA,
December 9, 1872.

Hon. GEO. H. WILLIAMS, *Attorney-General United States:*

General assembly returned by legal board is now organized at State-house. Senate has present twenty republicans, eight democrats; house fifty republicans and fourteen democrats; about half Warmoth's members participating. State supreme court has sent Elmore, Warmoth's usurping judge of the eighth district court, to jail ten days for contempt, and his clerk five days, and fifty dollars each. All quiet.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

Hon. GEO. H. WILLIAMS, *Attorney-General:*

Governor Warmoth has been impeached by vote of fifty-eight to six. Warmoth's legislature returned by his board has made no pretense of a session.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

President GRANT:

Having taken the oath of office and being in the possession of the gubernatorial office, it devolves upon me to urge the necessity of a favorable consideration of the request of the general assembly as conveyed in the concurrent resolution of this day telegraphed to you requesting the protection of the United States Government. Be pleased to send the necessary orders to General Emory. This seems to me a necessary measure of precaution although all is quiet here.

P. B. S. PINCHBACK,
Lieutenant-Governor, Acting Governor of Louisiana.

[Telegram.]

NEW ORLEANS, *December* 9, 1872.

We have the honor to transmit to your Excelleney the following concurrent resolution of both houses of the general assembly and to request an early reply:

Whereas the general assembly is now convened, in compliance with the call of the governor, and certain evil-disposed persons are reported to be forming combinations to disturb the public peace, defy the lawful authority, and the State is threatened with violence: Therefore.

Be it resolved by the senate and house of representatives of the State of Louisiana in general assembly convened, That the President of the United States be requested to afford the protection guaranteed each State by the Constitution of the United States when threatened with domestic violence, and that the presiding officers of the general assembly transmit this resolution immediately, by telegraph or otherwise, to the President of the United States.

Adopted in general assembly convened this 9th day of December, A. D. 1872.

P. B. S. PINCHBACK,
Lieutenant-Governor, and President of the Senate.
CHAS. W. LOWELL,
Speaker of the House of Representatives.

[Telegram.]

NEW ORLEANS, *December* 10, 1872.

President U. S. GRANT, *Washington, D. C.:*

Pursuant to advertisement, democratic indignation meeting was held at noon. Inflammatory appeals were made in circulars, and incendiary language used by some of the speakers, but I do not regard any outbreak imminent. That my course is approved by the vast majority of the honest citizens is beyond doubt.

P. B. S. PINCHBACK,
Lieutenant Governor, Acting Governor.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

The Warmoth legislature are now in session at the city-hall, in defiance of the restraining order of the court.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Condition of affairs disturbed. Warmoth, although impeached and suspended, has issued a proclamation against Governor Pinchback and the legislature, likely to cause a collision, unless prompt action is taken by the Government. The question is now political, with no doubt as to the executive status of Governor Pinchback and the legislature convened last Monday, and now in session at the State-house.

J. R. BECKWITH,
United States Attorney.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

Hon. G. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Evening Times of Saturday gives names of seventy-four pretended senators in Warmoth's senate. At its organization at city-hall, to-day, six out of that number were not present, but falsely reported so. Eleven out of the twenty-four were returned defeated by the returning-board, leaving only seven *bona fide* senators, democrats and liberals, actually present sitting as a quorum of the thirty-six senators of Louisiana.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Warmoth has just issued two proclamations, published in Extra Times: one declaring legislation of State-house illegal, and warning all officers to resist, and that he will resist its authority with all the power of the State; the other declaring the city-hall to be the State-house, where he says he will discharge the duties of governor. The pretended

members of legislature returned by Warmoth's canvassing board are now in session at city-hall. Warmoth's message is being read.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

THE PRESIDENT OF THE UNITED STATES:

Under an order from the judge of the United States district court, investing James Longstreet, Jacob Hawkins, and others, with the powers and duties of returning-officers under State election law, and charging them with the duty of completing the legal returns and declaring the result in accordance therewith, those persons have promulgated results based upon no returns whatever, and no evidence except ex-parte statements. They have constructed a pretended general assembly, composed mainly of candidates defeated at the election, and those candidates protected by United States military forces have taken possession of the State-house, and have organized a pretended legislature, which, to-day, has passed pretended articles of impeachment against the governor; in pursuance of which, the person claiming to be a lieutenant-governor, but whose term had expired, proclaimed himself acting governor, broke into the executive office under the protection of United States soldiers, and took possession of the archives. In the mean time the general assembly has met at the city-hall, and organized for business with sixty members in the house and twenty-one in the senate, being more than a quorum of both bodies. I ask and believe that no violent action be taken, and no force used by the Government, at least until the supreme court shall have passed final judgment on the case. A full statement of the facts will be laid before you and the Congress in a few days.

H. C. WARMOTH,
Governor of Louisiana.

DEPARTMENT OF JUSTICE,
December 11, 1872.

P. B. S. PINCHBACK, *Acting Governor of Louisiana:*

Requisition of legislature transmitted by you is received. Whenever it becomes necessary in the judgment of the President, the State will be protected from domestic violence.

GEO. H. WILLIAMS,
Attorney-General.

[Telegram.]

NEW ORLEANS, LOUISIANA, *December* 11, 1872.

Hon. GEO. A. WILLIAMS, *Attorney-General:*

I have the honor to acknowledge the receipt of your dispatch. May I suggest that the commanding general be authorized to furnish troops upon my requisition upon him for the protection of the legislature and

the gubernatorial office. The moral effect would be great, and in my judgment tend greatly to allay any trouble likely to grow out of the recent inflammatory proclamation of Warmoth. I beg you to believe that I will act in all things with discretion.

P. B. S. PINCHBACK,
Lieutenant-Governor, Acting Governor.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

President GRANT:

Parties interested in the success of democratic party, particularly the New Orleans Times, are making desperate efforts to array the people against us. Old citizens are dragooned into an opposition they do not feel, and pressure is hourly growing; our members are poor and adversaries are rich, and offers are made that are difficult for them to withstand. There is danger that they will break our quorum. The delay in placing troops at disposal of Governor Pinchback, in accordance with joint resolution of Monday, is disheartening our friends and cheering our enemies. If requisition of legislature is complied with, all difficulty will be dissipated, the party saved, and everything go on smoothly. If this is done, the tide will be turned at once in our favor. The real underlying sentiment is with us, if it can but be encouraged, Governor Pinchback, acting with great discretion, as is the legislature, and they will so continue.

JAS. F. CASEY,
Collector.

[Telegram.]

NEW ORLEANS, 11, 1872.

Hon. GEO. WILLIAMS:

If President in some way indicate recognition, Governor Pinchback and legislature would settle everything. Our friends here acting discreetly.

W. P. KELLOGG.

[Telegram.]

NEW ORLEANS, 11th, 1872.

President GRANT:

Democratic members of legislature taking their seats. Most, if not all, will so in next few days. Important that you immediately recognize Governor Pinchback's legislature in some manner, either by instructing General Emory to comply with any requisition by Governor Pinchback, under joint resolution of legislature of Monday, or otherwise. This would quiet matters much. I earnestly urge this and ask a reply.

JAMES F. CASEY.

[Telegram.]

NEW ORLEANS, *December* 11, 1872.

President GRANT:

Warmoth has issued a proclamation declaring that his legislature has assembled in city-hall. Not any of the regular republican members were present. In order to make a question in senate, he published the names of four regular republican senators as being present, but were in regular legislature at capitol. His legislature is composed mainly of persons never returned as elected. There is danger of a collision, which can be avoided and quiet restored, by an immediate compliance with requisition of regular legislature made to you on Monday. Governor Pinchback has received no response to this requisition, which has encouraged Warmoth to believe that it has been denied. We earnestly request that, in view of the impending danger of collision, that the requisition be complied with. There is a quorum of both houses of regular legislature now in session at capitol.

WM. P. KELLOGG.
JAS. F. CASEY.

[Telegram.]

NEW ORLEANS, *December* 12, 1872.

President GRANT:

The condition of affairs in this: The United States circuit court has decided which is the legal board of canvassers. Upon the basis of that decision a legislature has been organized in strict conformity with the laws of the State, Warmoth impeached, and thus Pinchback, as provided by the constitution, became acting governor. The chief justice of the supreme court organized the senate into a court of impeachment, and Associate Justice Tallifeiro administered oath to Governor Pinchback. The legislature, fully organized, has proceeded in regular routine of business since Monday. Notwithstanding this, Warmoth has organized a pretended legislature, and it is proceeding with pretended legislature. A conflict between these two organizations may at any time occur. A conflict may occur at any hour, and in my opinion there is no safety for the legal government, without the federal troops are given in compliance with the requisition of the legislature. The supreme court is known to be in sympathy with the republican State government. If a decided recognition of Governor Pinchback and the legal legislature were made, in my judgment it would settle the whole matter. General Longstreet has been appointed, by Governor Pinchback, as adjutant-general of State militia.

JAMES F. CASEY.

[Telegram.]

NEW ORLEANS, 12*th*, 1872.

President U. S. GRANT:

In view of the fact that H. C. Warmoth, assuming to act as governor after having been impeached and suspended from his office of governor in strict compliance with the court and laws of this State, has issued a proclamation declaring himself as still governor of the State, and has

assumed to convene an illegal body of men styling themselves a legislature, thus endangering the public peace and tranquility, and threatening domestic violence, I respectfully request that the commanding officer of this department be instructed, in compliance with the requisition of the legislature, to aid and assist me in maintaining the public peace and protection and sustaining the legal State government.

P. B. S. PINCHBACK,
Acting governor of Louisiana.

[Telegram.]

NEW ORLEANS, *December* 12, 1872.

His Excellency U. S. GRANT,
President of the United States:

SIR: As chairman ot a committee of citizens appointed under authority of a mass-meeting recently held in this city, I am instructed to inform you that said committee is about leaving here for Washington to lay before you and the Congress of the United States the facts of the political difficulties at present existing in this State, and further earnestly to request you to delay executive action on the premises until after the arrival and hearing of said committee, which is composed of business and professional men without regard to past political affiliations.

THOMAS A. ADAMS,
Chairman.

[Telegram.]

NEW ORLEANS, *December* 13, 1872.

His Excellency U. S. GRANT,
President of United States:

The following memorial, already signed by us, is being circulated among our people, irrespective of color and politics, for general signature, and will be presented to your excellency and Congress by a large committee of citizens delegated to visit Washington for this purpose. We earnestly renew our request made in dispatch of yesterday by our chairman, Thomas A. Adams, for suspension of executive action until said committee shall have laid before you this memorial and many other facts of the situation.

MEMORIAL.

To the President and Congress of the United States:

This memorial of citizens of the State of Louisiana represents that at the election held under the laws of the State, on the 4th day of November last, John McEnery was elected governor, Davidson B. Penn lieutenant-governor, James Graham auditor, Samuel Armstead secretary of state. H. N. Ogden attorney-general, and R. M. Lusher superintendent of public education, by large majorities of from seven to twelve thousand votes. There were 128,402 votes cast, besides the votes of Saint James and Saint Tammany, from which no returns have been received. The members of the house of representatives and a portion of the senators of the general assembly were also elected. The election was orderly and undisturbed by tumult or riot of any kind. When the fact of the result of the election had become apparent, William Pitt Kel-

logg, now a member of the Senate of the United States, and not eligible to the office of governor under the constitution of the State, commenced a suit in chancery in the circuit court of the United States against the governor of State, a number of persons engaged in examining and ascertaining the individuals chosen at election, and his opponent, as defendant, upon the pretext that he was apprehensive that the governor and other officers would miscount the votes returned, mutilate or destroy the evidence of the election, and by this method his opponent would be declared to be governor instead of himself, and that he would not have proper testimony to sustain a contest under the twenty-third section of the act of Congress of the 31st of May, 1870, which he supposed furnished himself with a cause and a tribunal to recover that office.

We charge that the suit was commenced and conducted in bad faith, for the scope and aim of the restraining order, injunctions, and other proceedings have but little relevancy to the preservation and perpetuation of testimony in a possible suit, but have had a direct influence and operation upon transactions outside of the court. It may fairly be concluded that the object of the suit, of the orders and decrees in it, has been to embarrass, entangle, and to disorganize the lawful administrators of the State government in order that a board of usurpers might take possession and control it for their own emolument and advantage, and the effect has been to make a revolution in the State government under the process of the courts and with the assistance of the Army of the United States, contrary to the law and the votes of the people at the election. The suit in the circuit court of the United States is commenced by a citizen of the State of Louisiana against the governor of the State and several officers and citizens of the State, to divest them, under color of an injunction and performance of an administrative function. The professed object of this citizen is to secure a conservation of testimony to aid him in asserting a possible claim to an office in the State, which he thinks he may perhaps have. The courts of the United States have no jurisdiction of controversies between citizens of the same State, except in a very few well-defined cases. There is no act of Congress that authorizes a citizen of a State to bring a suit against citizens of the same State to perpetuate or preserve testimony in any case of this kind. There is no law of the United States that authorizes a citizen of a State to bring a bill against the governor and other returning-officers of a State to control them in the performance of their official duty. The whole principle and structure of the Government of the United States, State and Federal, oppose the conclusion that a State administration can be dragged into the courts of the United States by the citizens of the same State. In reference to any matter of municipal administration, no section of the act of 31st May, 1870, lends the least countenance to the association of jurisdiction in such a case, or to the high-handed orders that appear in it. The peace and dignity of the State have been prostrated by a successful effort to overturn the administration of the State under the command (combined?) operations of the Army of the United States and the circuit court of the United States, and a usurping and unconstitutional administration has been placed in its stead. The course of this insurrection has been rapid and successful. The duties of governor of the State are now performed by a person calling himself acting governor. Under the constitution of Louisiana the office of governor and lieutenant-governor are filled by the people at an election. In case of a vacancy in these offices for any cause, another officer is designated by the laws to supply this place. This acting officer is either the presiding officer of the senate, or, in some contingency, the speaker of the house of representatives. The acting governor is not a senator or member of the house of representatives, and was not when he assumed to act as governor, and has not been since the 4th day of November last. The condition indispensable to a capacity to act as governor does not exist; he is a mere usurper and instrument to accomplish the revolution commenced by judiciary process and enforced by armed soldiers. The legislature acting with this usurping governor comes together without legal evidence of any authority, and have commenced operations by abolishing courts that are filled by men elected by the people in November by overwhelming majorities; and in place of these courts a new court is provided, whose judge and clerk is to be nominated by this acting governor and his senate and command. (?) It is not surprising that a wide-spread feeling of indignation, disgust, and distaste prevails at these extraordinary proceedings. They are without parallel in annals of the United States. They betoken a spirit of malice and mischief, a determination to prostrate all the bulwarks of law and of social order, under the guise and cover of judiciary action, to secure ends purely selfish and personal. They manifest a contempt for the institutions of the country, the peace of society, the guarantees of life, liberty, and of property, that has created alarm and insecurity. The undersigned have been filled with amazement and apprehension that the guilty authors of the measures can have (the) least encouragement or support from the President or Congress of the United States. We, as citizens of the State of Louisiana, and as having no party associations to disturb our judgment, and impressed with the conviction that the evils under which the State has suffered from misgovernment will be aggravated by the flagrant violations of law and right for ends per-

sonal, do respectfully ask that in this exigency the associate justice of the United States assigned to this judicial circuit, and the judge of the circuit court of the United States for this circuit, may take charge of the judicial administration of the circuit court; that the employment of the Army of the United States in the civil administration of this State be discontinued until the peace of the State shall be disturbed; and, finally, that the President and the Congress refrain from giving encouragement, countenance, or authority to any new government or officer until their title be validly ascertained and determined.

Thos. A. Adams.	Chas. Fitz.	J. T. Noyes.
J. B. Bell.	Chas. E. Fenner.	Ed. Taty.
Jas. Bowling.	H. Freslzen.	C. M. Wilcox.
Chas. Briggs.	L. H. Gardner.	W. G. Wheeler.
Alex. Brothers.	L. F. Genes.	B. T. Walsh.
G. M. Bayley.	A. B. Griswold.	N. D. Walco.
Albert Baldwin.	T. Hunt.	David Wallace.
Aug. Bohn.	S. Horneshun.	Douglass West.
A. Chappell.	P. Irwin.	J. H. Eglesby.
A. Charles Cavaros.	S. H. Kennedy.	H. V. Ogden.
Jno. Chaff.	Carl John.	W. S. Pike.
J. S. Capes.	S. Katz.	Jno. Phelps.
H. W. Conner.	D. C. Labatt.	Jno. Potts.
J. A. Campbell.	Chas. Lafitte.	H. M. Payne.
Loyd R. Coleman.	Richard Lloyd.	J. F. Pollock.
H. Dudley Coleman.	C. J. Leeds.	P. Pamsine.
J. J. Day.	Jno. W. Labouisse.	A. Rasin.
Geo. W. Dunbar.	Hugh McCloskey.	H. Renshaw.
R. M. Davis.	Victor Meyer.	J. H. Stauffer.
A. M. Fortier.	A. Miltenberger.	E. H. Summers.
P. Fouschey.	G. W. Nott.	Henry Shepperd.
Jno. Faubank.	W. B. Schmidt.	
Geo. A. Fasdick.	W. C. Thompkins.	

[Telegram.]

DEPARTMENT OF JUSTICE.
December 12, 1872.

Acting Governor PINCHBACK,
New Orleans, Louisiana:

Let it be understood that you are recognized by the President as the lawful executive of Louisiana, and that the body assembled at Mechanics' Institute as the lawful legislature of the State, and it is suggested that you make proclamation to that effect, and also that all necessary assistance will be given to you and the legislature herein recognized to protect the State from disorder and violence.

GEO. H. WILLIAMS,
Attorney-General.

[Telegram.]

DEPARTMENT OF JUSTICE.
December 13, 1872.

Hon. JOHN MCENERY,
New Orleans, Louisiana:

Your visit with a hundred citizens will be unavailing so far as the President is concerned. His decision is made and will not be changed, and the sooner it is acquiesced in the sooner good order and peace will be restored.

GEO. H. WILLIAMS,
Attorney-General.

[Telegram.]

NEW ORLEANS, *December* 13, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General United States:

The entire republican party of this State thank the President and yourself for action of yesterday in recognizing the legal and constitutional State government. This action has prevented the consummation of the most barefaced and outrageous election frauds. Every indication points to quiet and good order. The bogus legislature of Warmoth has adjourned *sine die*. Police reported last night to Governor Pinchback.

WM. P. KELLOGG.
C. B. DURELL.
B. F. FLANDERS.
CHAS. CLINTON.
JAS. F. CASEY.
E. C. BILLINGS.
JNO. KAY, and many others.

[Telegram.]

NEW ORLEANS, *December* 13, 1872.

Hon GEORGH H. WILLIAMS:

Warmoth's pretended legislature has adjourned *sine die*.

S. B. PACKARD.
United States Marshal.

[Telegram.]

NEW ORLEANS, 12*th*, 1872.

His Excellency U. S. GRANT,
President United States:

Claiming to be governor-elect of this State, I beg you, in the name of all justice, to suspend recognition of either of the dual governments now in operation here, until there can be laid before you all facts, and both sides, touching legitimacy of either government. The people denying the legitimacy of Pinchback government and its legislature, simply ask to be heard, through committee of many of our best citizens on eve of departure for Washington, before you recognize the one or the other of said governments. I do not believe we will be condemned before we are fully heard.

JNO. McENERY.

[Telegram.]

NEW ORLEANS, *December* 14, 1872.

President U. S. GRANT, *Washington, D. C.:*

Louisiana field artillery, four Napoleon guns, two companies infantry, armed with Winchester rifles, numbering five hundred men, nearly all

the militia force acting under the command of H. C. Warmoth, stationed in the State armory, with arms loaded, are in open mutiny and disobedience of the civil and military authorities of the State government. They have been repeatedly commanded to lay down their arms. A large armed police force, under the command of General A. S. Badger, of the State militia, has been ordered to take the position. General Badger reports the position too strong for his force; they offer to surrender to any United States military force. I have sent a copy of the dispatch from the Attorney-General, dated the 12th instant, to the commanding general of this department, calling upon him for a military force, for the purpose of suppressing this mutiny. He has refused to comply with my demand, and alleges a want of proper authority in the premises. I would respectfully request, in compliance with the requisition of the legislature, that you place a military force at my disposal, in order to enable me to suppress this armed revolt and execute the laws.

P. B. S. PINCHBACK.
Lieutenant-Governor, Acting Governor Louisiana.

[Telegram.]

NEW ORLEANS, *December* 13, 1872.

ADJUTANT-GENERAL U. S. A., *Washington:*

There is imminent danger of immediate conflict between two armed bodies of men of some considerable numbers, one body of State militia, representing Governor Warmoth, holding an arsenal; the other an armed body of police, representing Governor Pinchback. I have been appealed to to interfere. Shall I do so; and if I interfere, to which party shall the arsenal be delivered? The parties are face to face with arms in their hands. I beg an immediate answer. I sent an officer to try what can be done by persuasion to suspend the conflict until an answer can be received. There will be no resistance to the Federal forces.

W. H. EMORY,
Colonel Commanding.

[Telegram.]

WASHINGTON, *December* 14, 1872.

General W. H. EMORY, U. S. A.,
Commanding New Orleans, Louisiana:

You may use all necessary force to preserve the peace, and will recognize the authority of Governor Pinchback.

By order of the President.

E. D. TOWNSEND,
Adjutant-General.

[Telegram.]

NEW ORLEANS, *December* 14, 1872.

To the ADJUTANT-GENERAL U. S. A.:

On the receipt of your telegram last night, an officer was sent to the contesting parties to ask the evacuation of the arsenal and the dispersion of the armed forces. The demand was promptly complied with and the arsenal turned over to the State authorities this morning. Everything now is quiet.

W. H. EMORY,
Colonel Commanding, Brevet Major-General.

Letter from Hon. C. B. Darrall to the Attorney-General.

NEW ORLEANS, LOUISIANA.
December 14, 1872.

MY DEAR SIR: As I am detained here by sickness in my family, I have thought best to write you, giving briefly some facts and ideas in regard to our difficulties in this State. I would inform you first that so far as my district is concerned, I am not personally interested, as I am returned by both Warmoth's and Lynch's board by over six thousand majority; so I think I can speak without prejudice.

Our whole trouble has arisen from Governor Warmoth's effort to turn over the State to the democrats, through the use of the State election law. And now a few facts from my own district to this point. In the parish of Baton Rouge, where the colored are as four to one, the State register started out by refusing to register unless they came a ternately one white and one colored, and as the colored were so largely in majority they must wait for a white man to come; often as many as a hundred colored men were waiting at once. This course he pursued during the whole registration, and by this means nearly two thousand colored men were prevented registering in the one parish.

And again, in my own parish of Saint Mary, the State register was a candidate for the State senate. He gave no notice of the places where he would register, denied colored men on all kind of pretexts, appointed all the commissioners from democrats; and when he came to count the State ticket, he counted with bolted doors, and only returned about one hundred majority for that ticket, when I had for Congress about five hundred—my vote being counted openly in the presence of United States inspectors; and we all knew the State ticket ran the same as the national and congressional. This, and even worse, was the condition in all the country parishes, except some few where the registers would not do such dirty work, and there our vote shows large increase.

Now a word as to the committee of citizens who left here for Washington to-night. Many of them are worthy men, but they are all residents of this city, where the returns are substantially the same by both boards. They will represent that they have been wronged, and all that; but in fact the frauds were perpetrated in country parishes that these worthy men knew nothing about, and that we can substantiate by thousands of witnesses.

I would say, in conclusion, then, and I think with no partisan view, that you and the President have been right in your action so far in re-

gard to our complications. And the best you can do for this committee who will visit you is to ask them to return home and look at the evidence we have of these frauds. We can abundantly satisfy them.

Very respectfully, &c.,

C. B. DARRALL.

Hon. GEORGE WILLIAMS,
Attorney-General, Washington, D. C.

Letter from H. N. Ogden, attorney-general of Louisiana, to the Attorney-General of the United States.

WASHINGTON CITY, *December* 14, 1872.

MY DEAR SIR: I beg leave to submit through you to the President the following points:

I. The action of the Executive in recognizing the assemblage at Mechanics' Institute, in New Orleans, as the legislature of Louisiana, and P. B. S. Pinchback as acting governor, was certainly premature. Pinchback was never lieutenant-governor of the State, and his term as a senator expired under the constitution of that State on the 4th day of November last. The assemblage at Mechanics' Institute was notoriously returned and seated by a deputy United States marshal under the order of an inferior Federal court. This fact can be ascertained by reference to the papers filed by me in the Supreme Court of the United States in the matter of *ex parte* Warmoth applying for a writ of prohibition. These are circumstances of which the Government must take notice.

II. Without discussing who was or who was not elected, I respectfully suggest that before the President undertook to settle the controversy and to pledge the great powers of his office to either side, much deliberation and a full hearing should have been accorded. The election was the most quiet and orderly ever held in the State. Not a symptom of riotous disposition, not even a personal quarrel or encounter connected with politics reported by the police authorities in any direction. The machinery of the State government was in perfect order after the election, and entirely competent to manage its own affairs, and with courts of justice ready to protect the rights of every citizen. By a sudden action of an inferior Federal court, which was absolutely *coram non judice*, the State government is completely overset, the State-house seized, and a government erected whose officers the people have never chosen. It cannot, sir, have escaped your attention that in pursuing this course a Federal court has been enabled by the assistance of the Army of the United States to subvert a State government, and to construct one in its place, for it is well known that the board of returning officers recognized by Judge Durell has not acted upon the sworn returns of the regular election officers of the State, from which alone they could have, under the law, declared the result, but profess to have been guided by the returns of United States inspectors, officers entirely unknown to the laws of Louisiana. So that the case stands plainly thus: A Federal judge, absolutely without jurisdiction, seizes a State-house and seats a legislature, the members of which have no other claim to their seats than the finding of a returning-board, whose sole authority is the recognition of this usurping Federal court, and which professes to act solely upon the statements or returns made by certain United States officers, who are entirely unknown to the laws of Louisiana. These are facts known

now by every intelligent man in this country, and, of course, not hid from the Chief Magistrate. The legislature thus assembled is the one recognized by the Executive of this great nation, and you telegraph, upon his authority, to our people commanding them to submit. If they were an uncivilized people accustomed to the shackles of a despotism, that submission which you command would be an easy matter, but, sir, they are Americans like yourself, born and raised under the free institutions of this great country; they are suffering the most grievous wrong that could be done a people, and are conscious that their Government have acted without proper deliberation and upon an *ex parte* showing of the case. Can you blame them for not yielding tamely to this oppression, and for making another appeal, which I now do in their name, to the President for an investigation of this matter?

I am not presenting to you the case of Henry C. Warmoth or of William Pitt Kellogg in this appeal; they are both strangers to us, and our people have suffered long and patiently under the mismanagement of such men, as is known to the whole country. I am speaking in the name and as the representative of the best people of Louisiana, who are firmly convinced that in the recent election they carried most of the important officers of their State, and that if effect shall be given to the real popular verdict of November, the government will pass into the hands of honest and capable men. They feel that in this they have a right to expect the sympathy of the Federal Executive, who has so recently received from the people of his country such distinguished evidence of their confidence.

The course of the Executive in this matter is, I fear, calculated to alienate the affections of the best people and to weaken their confidence in the protection of the Government and their love of our institutions.

I am persuaded that if the Government should, at this juncture, pursue a wise, magnanimous, and impartial course, let the result be what it may, the confidence and affection of the South would be promptly restored in the national Government, and all trouble in that direction be forever settled.

The action heretofore taken can be canceled or modified so as to give effect to these views, and in a very short time the true case can be placed before the Government, as a committee from Louisiana is now on its way, bearing all the facts to the President, and this committee is, according to my understanding, non-partisan.

Yours, very respectfully, &c.,

H. N. OGDEN,
Attorney-General of Louisiana.

Hon. G. H. WILLIAMS,
Attorney-General United States.

[Telegram.]

NEW ORLEANS, *December* 17, 1872.

Hon. GEO. H. WILLIAMS,
Attorney-General:

Have sent by mail to-night statement and proofs answering memorial taken there by the so-called citizens' committee, including tabulated registered vote by parishes, white and colored, outside of New Orleans. Forty-five thousand white, seventy-four thousand colored. The colored

men wrongfully refused registration would have increased the number several thousand. This data, hastily prepared and sent, will serve to show the extent of the frauds perpetrated and the countenance the so-called citizens' committee is giving the same.

S. B. PACKARD,
United States Marshal.

W. P. Kellogg to Attorney-General.

NEW ORLEANS, *January* 1, 1873.

MY DEAR SIR: The interest you have taken in our affairs prompts me to write you again, in order that you may fully understand the situation here.

An attempt is being made to get the Warmoth legislature together on the first Monday in January, the day on which, under the constitution, the legislature is to meet in regular session. It is pretty certain there will not be a quorum in either house. Several of the democratic members have already taken seats in our legislature, and many will do so at the regular session.

The newly elected governor is not to be inaugurated until a week after the new legislature convenes.

General Emory informs me that his heretofore direct communication with the War Department has been cut off, and that he is required to communicate through General McDowell. I do not anticipate much trouble; still, as many of these men are desperate, and are more or less supported by the lower and irresponsible class of the community, in order that there may be no disturbance of moment, I respectfully suggest that General McDowell be instructed to respond to any requisition which may be made by the legally constituted authorities should a sudden exigency occur. Prompt action in this regard, if necessary, might obviate all difficulty. All our friends and many prominent business men think that if General McDowell were to visit the city for a short time it would have a most salutary effect.

I take the liberty of troubling you with another point. The interest on our coupon bonds, amounting to $260,000, mostly payable in New York, will not be paid to-morrow, I regret to say. This is mainly attributable to the fact that many of the Warmoth favorite tax-collectors are defaulters. The fiscal agent telegraphed to New York last night that he was satisfied this whole matter would be corrected in a short time, and that he would be able to pay the interest by the middle of January.

The finances of the State are in a most deplorable condition, and the fiscal agent informs me that the payment of the interest on the last quarter very nearly went by default.

Everything indicates that Warmoth intended either to let the present payment go by default, or succeed in raising that amount from private sources, in order for the time being to cover up the real condition of the finances.

The developments in the auditor's office show a most astounding condition of things. Since 1865, warrants to the amount of $30,453,888.69 have been issued, all but seven millions under Warmoth administration. During the same time there have been paid of these warrants $27,196,651.44, leaving an amount of outstanding unpaid warrants to date of $3,257,237.25.

The attorney-general has just sued out an injunction on behalf of

the State, restraining the payment of more than a million of these warrants, on the ground that they were illegally issued. We hope to be able to stop the payment of at least half a million more. With a little effort, I am satisfied that we can make such a radical change in the finances of the State as will enable us to pay the interest upon all the bonded debt, and put the finances generally upon a sound and creditable basis. Of course we do not entertain for one moment the idea of repudiating any portion of the legitimate debt of the State.

I write this chiefly because I desire you to understand the condition of things, and inasmuch as it has occurred to me that the opposition may attempt to make capital against us, and against the action of the administration, growing out of the failure to pay immediately the interest upon our coupons.

You will remember ours is not an exceptional case. It was the same in Georgia, Alabama, and I believe in Tennessee, as well as one or two other States. We shall, however, I hope, correct this much sooner than those States did.

Very truly, yours,

WM. P. KELLOGG.

Hon. GEO. H. WILLIAMS.
Attorney-General United States.

[Telegram.]

NEW ORLEANS, *January* 3, 1873.

To President GRANT:

Several persons who claim to have been elected to the legislature, in conjunction with H. C. Warmoth, the impeached and suspended executive, and John McEnery, late democratic candidate for governor, propose to meet in this city on next Monday, and organize a so-called general assembly, in conflict with the legislature now in session at the State-house, and to inaugurate said McEnery as governor. To prevent a subversion on the present State government and to suppress riot, it may be necessary for me, as executive, to use police or other forces to prevent this revolution movement, and, in my judgment, under present orders, as contained in the telegrams to General Emory from the President, he would be authorized to furnish troops to sustain the State government. I have just ascertained that General Emory construes the orders already given to have been intended only for the particular occasion upon which they were issued, and unless further instructions are given he will decline responding to my demands for troops, and will interfere only in case of actual riot. I respectfully request that the order be repeated, or extended so as to fully cover the case, if maintenance of the State government and good order require me to make the demand on him.

P. B. S. PINCHBACK,
Acting Governor of Louisiana.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., January 4, 1873.

Colonel W. H. EMORY,
Commanding Department New Orleans, Louisiana:

Your dispatch, through General McDowell, has been laid before the War Department and the President, and you are hereby authorized to use your troops to preserve peace, should a contingency arise which in your judgment calls for it.

By command of General Sherman.

WM. D. WHIPPLE,
Assistant Adjutant-General.

[Telegram.]

Private.] JANUARY 4, 1873.

S. B. PACKARD,
United States Marshal, New Orleans, Louisiana:

I think there ought to be no forcible interference with any proceedings to inaugurate McEnery, if they are not accompanied by violence, and there is no attempt to take control of the State government.

GEO. H. WILLIAMS,
Attorney-General.

[Telegram.]

[Dated New Orleans, January 5, 1872; received at northeast corner Fourteenth street and Pennsylvania avenue 8.15 p. m.]

To Hon. GEORGE H. WILLIAMS.
Attorney-General United States, Washington:

Members of legislature returned as elected by the State board, recognized by Governor Warmoth before the assemblage of the body at Mechanics' Institute, are compelled to meet to-morrow under our constitution, in order to preserve their status. Their assemblage will be peaceable, without arms, and with no purpose of aggression, but simply to organize.

The organization presided over by Pinchback has threatened violent interference, from which serious trouble may arise. That organization derives its authority from the attitude of the Federal Executive, and will be controlled by the President.

We trust that he will discountenance interference with this assemblage, which has a lawful object and is rendered necessary by the situation. Please see the President immediately.

H. N. OGDEN,
Attorney-General, Louisiana.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., January 5, 1873.

General W. H. EMORY,
Commanding Department, New Orleans, Louisiana:

The following orders are just received and you will promptly act in conformity thereto:

EXECUTIVE MANSION,
Washington, D. C., January 5, 1873.

GENERAL: The President directs that General Emory be telegraphed immediately that he inform Governor Pinchback that the troops will not be furnished to disperse any body of men claiming to be a legislature, or otherwise assembling peaceably, and not obstructing the administration of the recognized government of the State.

Very respectfully,

WM. W. BELKNAP,
Secretary of War.

General W. T. SHERMAN,
Commanding the Army, &c.

General McDowell is here, and on receipt reply to me direct.

W. T. SHERMAN,
General.

ADJUTANT-GENERAL'S OFFICE,
Washington, January 6, 1873.

Official copies:

THOMAS M. VINCENT,
Assistant Adjutant-General.

[Telegram.]

NEW ORLEANS, *January 6, 1873.*

Attorney-General WILLIAMS,
Washington, D. C.:

Legislature met in regular session at State-house; present, twenty-seven senators and sixty-eight representatives. Odd-Fellows' Hall assemblage adjourned without quorum, having but fourteen claiming to be senators, and forty-seven representatives.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *January 6, 1873—6 p. m.*

GEO. H. WILLIAMS,
Attorney-General, Washington, D. C.:

Warmoth legislature in session at Odd-Fellows' Hall without a quorum. City council, democratic, by resolution excluded the so-called legislature from Lyceum Hall, the place designated by Warmoth as State-house. Large crowd in front of Odd-Fellows' Hall, but all quiet. I believe the purpose of State authorities not to interfere with the as-

semblage so long as no overt acts are committed to overthrow State government.

S. B. PACKARD,
United States Marshal.

[Telegram.]

NEW ORLEANS, *January* 6, 1873.

To General W. T. SHERMAN,
Commanding the Army, Washington, D. C.:

The day passed quietly; no disturbance whatever.

W. H. EMORY,
Colonel Commanding.

HEADQUARTERS OF THE ARMY,
Washington, D. C., January 7, 1873.

Official copy respectfully submitted to the Secretary of War.

W. T. SHERMAN,
General.

[Telegram.]

DEPARTMENT OF JUSTICE,
Washington, January 6, 1873.

S. B. PACKARD,
United States Marshal, New Orleans, Louisiana:

The report of the committee of two hundred, that the President regards his recognition of the existing government as provisional and temporary, is not true. The recognition is final, and will be adhered to, unless Congress otherwise provides.

GEO. H. WILLIAMS,
Attorney-General.

[Telegram.]

THE WESTERN UNION TELEGRAPH COMPANY.

[Dated New Orleans, ——— 11, 1873. Received at Washington, January 11, 10.15.]

To Colonel W. D. WHIPPLE,
Assistant Adjutant-General:

As Mr. Kellogg has been declared by Governor Pinchback and the legislature which he recognizes, as the governor-elect of Louisiana, I presume it is intended by my instructions that I shall also recognize him, and shall accordingly do so unless otherwise instructed. Addressed letters to the General commanding Army, on 8th and 9th instant, but they may not reach in time for action. The situation is becoming more complicated, and, in my opinion, the use of the troops simply to keep the peace cannot lead to a satisfactory or permanent solution of the difficulties here.

W. H. EMORY,
Colonel Commanding.

B.—MEMORIAL OF CITIZENS OF THE STATE OF LOUISIANA PROTESTING AGAINST THE RECOGNITION OF THE PRESENT STATE GOVERNMENT.

To the President and Congress of the United States:

This memorial of citizens of the State of Louisiana represents, that at the election held under the laws of the State on the 4th day of November last, John McEnery was elected governor, Davidson B. Penn, lieutenant-governor, James Graham, auditor, Samuel Armstead, secretary of state, H. N. Ogden, attorney-general, and R. M. Lusher, superintendent of public education, by large majorities, ranging from seven to twelve thousand votes. There were 128,402 votes cast, besides the votes of Saint James and Saint Tammany, from which no returns have been received. The members of the house of representatives and a portion of the senators of the general assembly were also elected. The election was orderly and undisturbed by tumult or riot or any kind.

When the fact of the result of the election had become apparent, William Pitt Kellogg, now a member of the Senate of the United States, and not eligible to the office of governor under the constitution of the State, commenced a suit in chancery, in the circuit court of the United States, against the governor of the State, a number of persons engaged in examining and ascertaining the individuals chosen at the election, and his opponent, as defendant, upon the pretext that he was apprehensive that the governor and other officers would miscount the votes returned, mutilate or destroy the evidence of the election, and that by this method his opponent would be declared to be governor, instead of himself, and that he would not have proper testimony to sustain a contest under the twenty third section of the act of Congress of the 31st May, 1870, which he supposed furnished himself with a cause and a tribunal to recover that office.

We charge that the suit was commenced and conducted in bad faith. For the scope and aim of the restraining order, injunctions, and other proceedings have but little relevance to the preservation and perpetuation of testimony in a possible suit, but have had a direct influence and operation upon transactions outside of the court. It may be fairly concluded that the object of the suit, of the orders and decrees in it, has been to embarrass, entangle, and to discourage the lawful administrators of the State government, in order that a band of usurpers might take possession of and control it for their own emolument and advantage. The effect has been to make a revolution in the State government under the process of the courts and with the assistance of the Army of the United States, contrary to law and the votes of the people at the election.

The suit in the circuit court of the United States is commenced by a citizen of the State of Louisiana, against the governor of the State, and several officers and citizens of the State, to direct them under color of an injunction as to the performance of an administrative function. The professed object of this citizen is to secure a conservation of testimony to aid him in asserting a possible claim to an office in the State which he thinks he may perhaps have. The courts of the United States have no jurisdiction of controversies between citizens of the same State, except in a very few well-defined cases. There is no act of Congress that authorizes a citizen of a State to bring a suit against citizens of the same State to perpetuate or preserve testimony in any case of this kind. There is no law of the United States that authorizes a citizen of a State to bring a bill against the governor and other returning officers of the

State, to control them in the performance of their official duty. The whole principle and structure of the Governments of the United States —State and Federal—oppose the conclusion that a State administration can be dragged into the courts of the United States by the citizens of the same State, in reference to any matter of municipal administration.

No section of the act of 31st May, 1870, lends the least countenance to the assertion of jurisdiction in such a cause, or to the high-handed orders that appear in it. The peace and dignity of the State have been prostrated by a successful effort to overturn the administration of the State, under the combined operations of the Army of the United States and the circuit court of the United States, and a usurping and unconstitutional administration has been placed in its stead.

The progress of this insurrection has been rapid and successful. The duties of governor of the State are now performed by a person calling himself acting governor. Under the constitution of Louisiana, the offices of governor and lieutenant-governor are filled by the people at an election.

In case of a vacancy in these offices for any cause, another officer is designated by the laws to supply the place.

This acting officer is either the presiding officer of the senate, or, in same contingency, the speaker of the house of representatives.

The present acting governor is not a senator or member of the house of representatives, and was not when he assumed to act as governor, and had not been since the 4th day of Novembr last. The condition indispensable to a capacity to act as governor does not exist. He is a mere usurper—an instrument selected to accomplish the revolution commenced by judiciary process and enforced by armed soldiers.

A pretended legislature, operating with this usurping governor, comes together without legal evidence of any authority, and have commenced operations by abolishing courts that are filled by men elected by the people in November by overwhelming majorities, and in the place of these courts a new court is provided, whose judge and clerk are to be nominated by this acting governor and his senate at command.

It is not surprising that a wide-spread sentiment of indignation, disgust, and detestation prevails at these extraordinary proceedings. They are without parallel in the annals of the United States. They betoken a spirit of malice and of mischief—a determination to prostrate all the bulwarks of law and of social order, under the guise and covert of judiciary action, to secure ends purely selfish and personal. They manifest a contempt for the institutions of the country, the peace of society, the guarantees of life, liberty, and of property, that has created alarm and insecurity.

The undersigned have been filled with amazement and apprehension, that the guilty authors of the measures can have the least encouragement or support from the President or the Congress of the United States. We, as citizens of the State of Louisiana, and as having no party associations or combinations to disturb our judgment, and impressed with the conviction that the evils under which the State has suffered from misgovernment will be aggravated by these flagrant violations of law and right, for ends personal, do respectfully ask that in this exigency the associate justice of the United States assigned to this judicial circuit, and the judge of the circuit court of the United States for this circuit, may take charge of the judicial administration of the circuit court; that the employment of the Army of the United States in the civil administration of this State be discontinued until the peace of the State shall be disturbed; and finally, that the President

and the Congress refrain from giving encouragement, countenance, or authority to any new government or officer until their titles to act be validly ascertained and determined.

J. W. Champlin.
H. S. Bell.
James H. Douglas.
F. B. Champlin.
J. Prados.
A. Chiapella.
J. W. Crawford.
Aug. Bergini.
F. McDonnell.
Edward Burthe.
Louis Burthe.
Gustave Kohn.
James de Labaw.
Z. Foley.
M. F. Bonis.
Henry Chiapella.
Douglas M. Jenkins.
Lilley Sarpy.
L. Crior.
B. Saloy.
L. D. Sarpy.
S. S. Martin.
L. N. Olivier.
Thomas Henderson.
Chas. Hernandez.
H. E. Champlin.
Horace Pickett.
F. B. Green & Co.
W. I. Hodgson.
A. J. Fitzpatrick.
Charles T. Nash.
Warren Howes.
C. H. Nash.
D. A. Harris.
Paul Grimes.
Thomas Prior.
George William Lotz.
T. H. Kennedy.
B. W. Willando.
Alfred Bouligny.
P. F. Arroya.
W. A. Bierman.
Alfred Belanger.
Leon Sarpy.
John B. Heno.
William S. Pike.
A. Sheppers.
Dr. J. H. Pike.
C. L. Mavor.
B. F. Tisdale.
A. V. Duralde.
E. W. Terry.
Francis Rawle.
F. Lambert.
L. W. Overton.
F. H. Ehrmann.
S. Lyman.
P. A. Hardy.
John H. New.
Harry T. Hays.
Page M. Barker.
James Evans, sr.
A. J. Tardy, jr.
J. H. Putnam.
P. Blain.
F. A. Peterson.
Eugene Harris.
R. L. Macmardy.
J. H. Greenwood.
A. Montardin.
Robert Bruce.
D. S. Fleming.
G. H. Magee.
A. Jumanville.
John L. Fondu.
T. D. Lowdes.
R. G. Eyrich.
I. H. Brown.
Daniel C. D. Smith.
Orray Taft.
M. W. Newman.
Edward Davis.
Thomas W. Kidder.
H. V. De Gray.
J. Anderson.
Morris & Co.
John Cahill.
William H. Renaud.
John I. Adams & Co.
E. Watson.
R. H. Bennett.
Frank C. Smith.
T. Toca.
James L. Pierson.
A. K. Brown.
Thomas Toby.
Chas. B. Upton.
L. P. Alfred.
J. D. Thompson.
W. P. Richardson.
S. M. Burnett.
Henry A. Seiler.
Spencer Field, jr., & Co.
E. Even.
James L. Lobdell.
Wheelock Finlay & Co.
L. F. Gineris.
Charles L. C. Dupuy.
F. O. Minor.
William H. Bueard.
J. P. Chanviere.
James Solomon.
John L. Ross.
B. Bridge, per F. E. B.
E. J. Waldron.
Henry J. Mather.
Ernest Landry.
Charles D. Delery.
P. S. Brand.
B. L. Mann.
R. Mulroy.
G. W. Terrell.
L. Clairain.
A. J. Sandegriff.
F. R. Sonthmayd.
F. A. Haber.
Lewis Stern & Bros.
M. T. Rice.
F. Ginley.
Edward Labarre.
A. Gonzales.
J. Villaweebia.
P. F. Perret.
J. T. Winnemore.
Jules Leaumond.
J. E. Jarrean.
P. A. Hyde.
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Leon Nimes.
John J. Diamond.
W. C. James.
J. Ramel.
F. G. & O. W. Barriere.
Geo. W. Babcock.
L. Uter.
L. Uter, jr.
W. I. Hon.
T. Polch.
Guion & Neippert.
J. H. Druilhet.
Emile Kurtz.
Arthur A. Crais.
P. Lalanne.
L. Degelas.
John E. Avre.
D. J. Reily.
J. Feeel.
Geo. McGibbon.
V. J. Joubert.
A. G. Tebo.
R. Benzie.
J. T. Allym.
L. E. Faines.
T. Z. Lafosse.
F. Amzie.
Arthur E. Latapie, jr.
Hebert, Meret & Pensond.
J. Pinsard.
C. Martin.
D. G. La Pointe.
P. A. Labauve.
A. F. Cronah.
Geo. Mathis.
A. B. Grimes.
C. F. Schnell.
Chas. Perrot.
J. A. Madburg.
A. T. Perrot.
J. H. Haite.
T. Frederickson.
A. Morcom.
Louis Genois.
Alcide Dinnestie.
Edward W. Reuss.
R. M. Sirling.
P. Lehand.
W. F. Petersen.
P. Lazenavel.
E. Bouligny.
Frank Pohlmann,
Canal st.
Otto Erlebach.
E. Levy.
James A. Mackay.
Thomas Rodriguez.
Daniel Elias.
F. Dubrich.
D. W. C. Peck.
L. Triemanx.
A. Elie.
A. Aug. Böhm.
G. C. Evans.
O. Robert.
E. G. Carrier.
J. Jaubert, jr.
D. W. Holmes.
J. G. Pierson.
M. O. Connolly.
R. P. Stainbnel.
C. W. Sargent.
O. Dupré.
M. J. Buck.
T. H. Holmes.
W. A. Buant.
Eugene Schmitt.
W. J. Pigneynn.
Jno. B. Schmitt.
F. H. Thompson, jr.
Edgar Trépagnis.
L. Canicce.
C. F. Durrive.
Eugene Lotel.
F. L. Jewell.
J. B. Lyenne, jr.
Chas. A. Levie.
H. Fehrenferr.
William J Boyd.
Geo. C. Wright.
Chas. A. Meyer.
C. C. Bagnie.
George Austin.
E. A. Tyler.
J. Mityzi.
Eugene Bakeler.
J. M. Cressy.
P. A. Bienvenu.
Geo. P. Woodlief.
James Lee.
Thomas Wall.
Frank A. Parker.
P. S. Monler.
Jas. A. Edie.
A. Montainat.
P. Gallot.
A. Paris.
E. Prosper.
Peter Mathnzen.
D. Despaux.
J. Breors.
R. Hubernald.
J. B. Lavidgne.
Chas. W. Pescny.
A. H. Ginlin.
J. Lawton.
T. L. Washburn.
C. M. DeCamp.
Wm. E. McNeil.
Wm. D. Vance.
Geo. Dufour.
J. A. Walker.
C. Dulburnely.
H. Hoiret.
Edgar Hincky.
E. Peychaud.
Henry Wertz.
Aug. Contarie.
Hart Hilborn & Co.
Louis Hilborn.
C. L. Sinclair.
B. Chilang.
Geo. P. Chilang.
R. A. Chilang.
J. A. Chilang.
Paris Chilang.
J. Paris Chilang.
Thos. Egerton.
A. Müller.
Dr. G. C. Cunningham.
Jno. A. Dougherty,
Baton Rouge.
James Ricketts, jr.
Henry S. Dowler.
C. Montardier.
S. C. Browdowski.
E. G. Cobb.
Wm. E. Cooper.
S. E. Rundle.
J. Chaeny.
R. Barbier.
C. H. Washburn.
E. Clandes.
W. W. Finley.
Thos. A. Boland.
Jules Bermudez.
Thos. C. Porteons.
L. A. Trosclair.
Chas. A. Harris.
A. Gross.
Henry G. Root.
M. S. Hedworth.
Geo. F. Lehde.

Thomas Keary.
Wm. Hogan.
H. Lambert.
P. T. Hogan.
Chas. J. Oberle.
Hy Schrimpt.
T. J. Ford.
Edward Lilienthal.
J. W. Dougherty.
J. Sipman.
J. D'Arcy.
Jno. Brandner, jr.
S. T. Bleping,
J. A. Maupas, jr.
Jos. Marcon.
E. Remay.
E. D. Levy.
Chas. Staidingel.
Jules L. Gautier.
W. R. Stauffer.
Arthur Simonin.
James Benton.
L. E. Zebal.
J. G. Wheeler.
J. A. C. Wadsworth.
J. F. Comet.
H. C. Cooney.
Jno. H. Dunning.
James C. Bullen.
Eugene C. Delery.
A. Badeain.
Jas. A. Maxwell.
Fenwick Enstis.
James H. Murray.
S. E. Guyot.
McWilliams, Marion & Co.
E. Scratchly & Co.
Gervais Schlater.
L. Rocquet.
F. S. Boze.
Morris Gutenaine.
M. Goldsmith.
S. Moses.
Frecheimer & Haler.
Sumner C. Payson.
Paul M. Goachaux.
A. Renaud.
A. Souza.
F. Perschall.
George Rehkopf.
Leopold Gerot.
S. Seitz.
E. Eichelberger.
L. Hebert.
A. Dupny.
Chas. Cooper.
Stephen Danenhauer.
Chas. Chevalier.
H. Eck.
Anton Frankiewig.
G. Seidenzahl.
P. Schunert.
Franz Hirz.
Anton Foltz.
Karl Kiefer.
Heinrich Fuller.
T. D. Greusen.
Chas. H. Lewis.
W. H. Richards.
Geo. Albert.
Wm. S. Dickson.
Henry Dietz.
Jos. H. Baylie.
E. Brunner.
C. Benkhardt.
Trosten & Valne.
Thos. Walker.
E. Digeon.
Wm. T. Hardie.
A. Grosjean.
Louis Kaufman.
C. L. Bower.
P. E. Durand.
John Friedrich.
J. Herbert.
T. Reilley.
F. Brion.
G. Kreihs.
J. O. McLean.
A. Cousin, jr.
Paul L. Nassenr.
A. Dapremont.
Rod Hathiss.
Wilhelm Fanz.
Jaromona Mehrle.
Johan Liitsi.
Charles Weeser.
J. Cherr.
Georg Gringur.
Adam Ziesse.
Paul Yost.
P. Eeisena.
Rudolf Kyburz.
Chard. Bärman.
G. Sontag.
S. B. W. Rudder.
C. J. Berry & Co.
G. Lanaux.
J. G. Vienne.
Alex. Biemenn.
Will Steven
E. E. O'Brien.
Moses Lobe.
T. H. Higinbotham.
L. Monrose.
A. Ferrier.
Aug. Wm. Brette.
F. I. Coiron.
J. C. de Rosenven.
George Lanaux, jr.
Percy Roberts.
Samuel Barnes.
C. N. Rastenr.
H. N. Dorid.
H. M Richards.
H. Miller.
S. J. Hugent.
N. W. Hays.
Charles J. Lewis.
Charles Angelo Canad.
Menard Doswell.
H. Hyman.
J. O. Nixon, jr.
George Crawford.
H L. Jewell.
J. W. Arthur.
John C. Potts.
Horace E. Shropshire & Co.
R. S. Rickey.
Tru. Trymanoez.
A. Grailhey.
A. F. Garder.
Richard Terrell.
Thomas Rodriguez.
A. Huard, jr.
J. J. Morin.
Gustave Pitard.
S. Block.
Emil Wilk.
X. Griffer.
T. S. Cassagne.
H. Robert.
L. E. Foutett.
Moses Harnes.
Ed. Ville, sr.
P. T. Sougeron.
J. T. Villars
Alb. de Annas.
Charles B. Pingleton.
August Huard.
Charles Ballego.
N. J. Bussey.
M. B. Brady.
John A. Dougherty.
Thomas Langridge.
W. H. Pratt.
A. E. Garcia.
James Rea.
Walter G. Robinson.
Myers & Linsey.
E. Levy & Co.
George Nathan.
J. G. Biendener.
Stone & Tutt.
Darcy & Wheeler.
Lehmann, Gindihans & Co.
N. August Bohn.
John F. Pollock.
N. Brittsen.
H. Dudley Coleman.
David Jackson.
J. Vanbanks.
H. O. Simms.
B. T. Walshe.
Edward Toby.
J. J. Toby.
Thomas C. Walsh.
L. L. Davis.
William S. Bosworth.
John S. Bein.
Joseph Lawson.
Harry W. Hancson.
Eugene H. Levy.
L. L. Lincoln.
A. Miltenberger.
G. Miltenberger.
C. J. Leeds.
J. K. Bell.
Richard Jones.
Benjamin Florence.
John K. Newman.
A. Martin.
J. Mann.
Samuel Logan, M. D.
James M. Cullen.
L. S. Widney.
Spencer Field.
M. Hirsche.
Jacob Myers.
Henry I. Budington.

S. Toocheimer.
Daniel E. Colton.
P. F. Tricou.
H. R. Poland.
G. L. Hall.
William C. Harrison, P'hd.
F. C. Godbold.
J. Sella Martin.
David C. Labatt.
Summer Kutz.
Edward C. Palmer.
A. H. Craig.
J. A. Lane.
I. S. Wells.
William Henderson.
J. L. Dunnico.
Samuel Snodgrass.
R. M. Harrison.
T. & S. Henderson.
M. P. Bobb.
John T. Burr.
J. P. Ganey.
Samuel Delegall.
Andrew J. Aiken.
John W. Watt.
J. W. Patton.
E. C. Femour.
Jenkins & Olmstead.
James O. Kiddell.
Joseph T. Carey.
J. N. Harrison.
Isaac T. Hinton.
J. C. Patrick.
W. A. Cantzen.
J. C. Hubbell.
H. Hamburg.
Chs. B. Upton.
James Beggs.
John Broadwell.
Ed. Ryan.
Julius Aronis.
Thomas P. Clinton.
John C. Sinnott.
G. A. Sanford.
W. N. Calmes.
S. Derbis.
R. Wadany.
F. C. Findra.
W. D. Bedford.
R. Sinnott.
Samuel Boyd.
M. D. F. H. Brooks.
C. W. Stimle.
John Wilson.
W. F. Gerard.
J. Ashbury.
C. T. Roeder.
Olwin Wilson.
S. E. Wyman.
Samuel Manning Todd.
D. Warren Brickoll, M. D.
E. H. Adams.
H. Bridge.
D. S. Bryon.
Emett Lane.
P. W. Leonard.
Paul Huller.
John Rellett.
Jacob Miller.
M. Lehman.
D. V. Benjamin & Co.
J. F. Walter.
L. B. Cain.
J. Marks & Co.
A. A. Greenwood.
Reni H. Brunet.
John H. Ekert.
F. Brunet.
Thos. Conway.
R. H. Y. Brunet, jr.
J. Y. Howell.
Dr. J. M. Ferguson.
F. M. Shemwell.
E. C. Murray.
B. F. Brunet.
Jessee Judson.
P. C. Quinn.
Jos. Johnson.
Moses Delaplain.
Amos Lewis.
Rob. Hall.
Jer. D. Hudsalle.
Adolph Weber.
John E. Harrison.
Geo. M. Wagoner.
S. Mendelshon.
J. Youenes.
Phaschal N. Strong.
J. A. Turrell.
W. H. Hutchings, sr.
L. E. Reynolds.
Sam. Henderson.
Jas. J. Jones.
Jacob Born.
S. Schmidt.
Wm. M. Goodrich.
Jas. Pagans.
Jno. P. Stagg.
Felix Vean.
H. Von Werthern.
Stephen Gay.
Hugh Wilson, jr.
James Buckner.
W. H. Smith.
Louis A. Davidson.
A. Punnaroux.
R. S. Walker.
A. Boreman.
K. Morgan & Co,
A. Morgan, jr.
Sidney M. Phelan.
Chas. O. Colton.
J. M. Roback.
A. D. Geixas.
Wm. R. Harral.
Wm. G. Young.
Jas. Y. Gray.
H. Jarpar.
Von Phul Brothers.
H. F. Jaspar.
Jno. Finney.
Henry C. Miller.
Charles A. Johnson.
W. M. Randolph.
R. H. Browne.
Wm. W. King.
R. H. Marr.
Edward D. White.
G. Campbell.
Thos. L. Bayne.
Patrick Fasley.
Peter Garvey.
Frank Hardardt.
Alfred Fredericks.
Hugh McClosky, jr.
William Jno. Thornhill.
Mortimer D. Dunn.
Casper Miller.
Mat. Gaffney.
Nick Smyth.
Kindreas Panzler.
T. J. Ford.
J. H. Sherman.
Patrick McKenna.
W. J. Hennessey.
Frank Yost.
John G. Faecher.
W. J. McCall.
Thomas J. Carr.
Wm. Mahoney.
L. Kinney.
P. Thibivilier.
J. Fitzgerald.
T. Hogium.
F. Oswald.
Eug. Martin.
Charles Albert.
George Jay.
E. R. Hart.
E. W. Eyshram.
Peter Davis.
J. Aug. Hagmann.
Adam Gasser, on behalf of F. Gondon, at La. M. E. Ice Company, by E. W. Eysham.
James Phillips.
Dennis Murphy.
C. Murphy.
Patrick Murphy.
M. McNamara.
Jos. A. Martins.
Bob Bowdrick.
E. C. Sammer.
John F. Crass.
Thos. Bailey.
John MacPire.
Gustave Clauss.
Joseph Weigel.
T. Cooper.
J. Allison.
C. R. Phillips.
Wm. Ayres.
Geo. H. Freeman.
Wm. Kno.
T. O. Boyle.
Peter Gibson.
J. Ross.
Rolier Morrison.
M. Harris.

We, the undersigned, presidents of banks and insurance companies in the city of New Orleans, prevented by imperative engagements from accompanying the committee of citizens who visit Washington for the purpose of presenting memorial and resolutions touching the political troubles of our State to the President and Congress of the United States, hereby signify our earnest sympathy and co-operation in said movement, and urge upon the President and Congress the necessity of extending the relief applied for by said committee as absolutely essential to the business, financial, and social welfare of our city and State.

THOS. A. ADAMS,
President Crescent M. Insurance Company.
CHAS. BRIGGS,
President Louisiana Im. Insurance Company.
WALTER G. ROBINSON,
President Mechanics and Traders' Bank.
JAMES DAY,
President Sun Mutual Insurance Company.
W. VAN NORDEN,
President Louisiana Savings Bank.
P. IRWIN,
President Hibernia Bank.
CHAS. ENGSTFELD,
Vice-President Teutonia Insurance Company.
GEO. JONAS,
President Canal Bank.
SAM'L H. KENNEDY,
President State National Bank.
D. S. MISHEL,
President of Germania Insurance Company.
J. H. OGLISH,
President Louisiana National Bank.
C. CAVAROC,
President New Orleans National Banking Association.
AM. FORKER,
President Bank of America.
C. KOHN,
President Union National Bank.
H. DOANE,
President Factors and Traders' Insurance Company.
E. H. SUMMERS,
President Crescent City National Bank.

EXHIBIT C.

Letter from S. B. Packard.

NEW ORLEANS, LOUISIANA,
December 15, 1872.

HONORED SIR: A memorial has been dispatched to you, subscribed by a body of citizens calling themselves a committee of one hundred, in relation to the political affairs of Louisiana. Last evening a portion only of that number left here to emphasize the remonstrance by their personal presence in Washington. The memorial opens with a premise which the delegation is necessarily impotent to maintain, to wit: That McEnery and his fellows upon the democratic ticket were elected. They and no part of them were agents in the election, or members of any board, but they confide simply in the spurious returns, made by a spurious board, so declared by the United States circuit court, and improvised by Mr. Warmoth solely because he found himself a minority upon the old and judicially-recognized board. I deem it pertinent to

state that the delegation is composed of old citizens of New Orleans, charged with all the political prejudices that usually distinguish that class in the South, and with such little confidence in the spirit of the Government to which they now prefer a claim for relief, that, in order to evade jury duty, they seldom register or vote. It is significant that so large a portion of the one hundred finally declined to undertake the mission to Washington. It is needful but to inquire of the delegation what evidence it possesses of the fact that McEnery *et al.* were elected, in order to discover that it has no basis for the assumption. The blacks of Louisiana constitute the major part of the republican party, and are, with scarcely an exception, as zealous for its advancement now as when they were first enfranchised. They are republicans by the instinct of self-preservation. Yet Mr. Warmoth recites in a "message," dated the 9th instant, that the total vote for governor, exclusive of the three parishes of St. James, Terrebonne, and St. Tammany, from which irregular and informal returns were received, amounted to 128,402, an increase of 21,860 on the vote of 1870. The republican vote, estimating and adding the three omitted parishes at the same vote cast in 1870, is only 3,734, 2,461 below the vote cast for the republican State ticket at the last election, and it is well known that thousands of republican voters throughout the State at this election supported the fusion ticket. A brief analysis of the polled votes of 1870 shows that the total white population, 361,156, census of 1870, cast 41,170 democratic votes in the election of 1870; that the total colored population, 365,345, census of 1870, cast 64,647 votes in the same election. On comparing the ratio of the total white population, comprising a large unnaturalized foreign element, to the white vote, we discover it to be one to nine, and by similar computation every fifth colored inhabitant is a voter.

I challenge any evidence that even the smallest number of blacks voted the fusion ticket, as alleged by the governor. Mr. Warmoth's figures, (to wit, 3,734 republican votes lost,) if correct, would show a total loss in the colored population since 1870 of 18,670, and a white gain in population of 196,740. Yet while the white population remains numerically at a stand-still the colored population is constantly on the increase. These figures result from a multiplication of 3,734 (republican votes said to have been lost) by five, the voting ratio as to that class, and 21,860 alleged democratic gain by nine, the voting white ratio. These are the figures presented in Mr. Warmoth's own "message;" but Warmoth's statement of the vote lost to the republican party and of that claimed to have been gained to the democratic, appears still more questionable when it is considered that the colored vote in the parishes heretofore regarded as turbulent has increased materially in 1872 over that of 1870. These parishes are as follows, as per returns by Mr. Warmoth himself in both elections:

	Colored vote 1870.	Colored vote 1872.
Bienville	93	424
Claiborne	532	930
Franklin	226	260
Jackson	300	502
Morehouse	514	655
Richland	179	278
Saint Landry	302	1,345
Catahoula	458	714

This foregoing analysis serves to corroborate the charges lodged in the United States circuit court against a large number of Warmoth's election officers, charged with such offenses as tampering with or dupli-

cating ballot-boxes, seizing them by armed process, ejecting and intimidating United States supervisors, establishing polls without notice, &c., as also the many thousands of affidavits by aggrieved citizens that they were wrongfully denied the rights to register and vote, are likewise more clearly established by Mr. Warmoth's own statements, and, were any further evidence necessary to confirm these grievances, it might appear in the following communication (document A) of State Register Blanchard to United States Marshal Packard, as also in the circular letter addressed by the same register to all the State supervisors through Louisiana, (document S, B.)

Fully to realize the extent of the frauds perpetrated, we have but to examine the following table of the vote polled in the several parishes of the fourth congressional district, as returned by Mr. Warmoth's improvised board in 1872, as compared with the vote cast in that district in 1870:

Parishes.	1870.		1872.	
	Rep.	Dem.	Rep.	Dem.
Bossier	732	634	553	952
Caddo	1,218	1,214	1,576	1,817
DeSoto	1,032	713	444	1,450
Natchitoches	2,069	345	550	1,250
Grant	656	296	401	516
Rapides	1,889	1,187	1,158	1,967
Avoyelles	1,117	818	1,260	1,813
Point Coupée	1,340	285	1,552	1,142
	10,053	5,492	7,494	10,507

These figures show a republican loss of 7,554 votes in two years, according to Mr. Warmoth's own returns in both elections. In all of these parishes, as in many others of the State, the United States supervisors were driven from the polls and inhibited from scrutinizing the voting and the counting. I cite the fourth congressional district as presenting a fair token of the mischievous purpose of the Warmoth agents throughout the State. It will be observed that in 1870 all the parishes above recited were largely republican, and by the regular and judiciously recognized board are now returned with the following republican majorities, this result being reached by such board, vested by law with authority to count the votes of those wrongfully denied, as preserved according to law, and filed in the United States circuit court, and to exclude such boxes as there was proof positive that they had been tampered with:

Bossier	1,159	Caddo	559
De Soto	333	Natchitoches	1,206
Grant	634	Rapides	871
Avoyelles	599	Point Coupée	362

The average registered vote is not less than three colored to one white in the district in question. An especial method of aggrieving the voters was in holding few places of registration in a parish, as in the case of Rapides and East Baton Rouge parishes, where the supervisor opened a place of registration, and remained until he exhausted the list of white voters, when he would leave for another point in the parish, where he would repeat his action. The State law permits a State su-

pervisor to establish polling-places in such numbers and at such points of the parish as he may deem proper; and this warrant was notoriously abused by Mr. Warmoth's appointees, as in the parish of Natchitoches four polls were opened without due notice, and at inaccessible points, where there had never been less than eleven.

The result of this insufficiency of polls constrained many republicans to go from thirty to eighty miles in order to cast their votes. The legal points of the controversy have been so clearly received by the United States circuit court here, that I feel it to be unnecessary to dwell upon them in this communication, despite the vehemence of the memorial in that regard. That the circuit court has abetted "an insurrection," countenanced "bad faith," or issued "high-handed orders," cannot be shown by the delegation now in progress northward. That its members have "no party associations or combinations to disturb our (their) judgment," seems likewise to invite question, since several of the members have been most pronounced through the public prints and on the political platform in denouncing the President and all those earnest to conserve the republican interests of Louisiana. Their speeches and subscribed essays have been envenomed with spleen, and it seems hardly probable that men who have declared the most ultra democratic views up to the hour they subscribed the remonstrance, could thus suddenly disavow "party associations" or "combinations." These men shared in the popular denunciation of Mr. Warmoth as a public enemy, (excepting certain of their number who, as capitalists, conspired with him in fluctuating State warrants,) until he bartered for asylum in the democracy, he to be assured a seat in the United States Senate, and that party to harvest the offices of the State through his legerdemain. In visiting Washington, the delegation practically and by intent plead the cause of a gigantic fraud; the attempt of honest citizens to redress which through a Federal court has provoked the wrath which only baffled partisans can feel. As specimens of the frauds attested to by thousands of affidavits, I call the attention to the certified copies of depositions of Joseph W. Jones and Frederick L. King, and the statements under oath of Page and Husted before the chief United States supervisor, and on file in his office. (Exhibits F, G, H, and I.)

In January last, when Mr. Warmoth environed the legislature with bayonets, the gentlemen comprising the one-hundred committee were urgent in their appeals to republicans to secure a modification of what they termed the infamous registration and election laws; but when he (Warmoth) became their confederate in seeking to deprive the republicans of this State of the rights guaranteed them by the Constitution, they called upon him to perpetuate in their interests the frauds against which they had clamored in 1870–'71 and the early winter and spring of 1872. Especially did they urge that he should not sign the reform bills passed by the legislature, and to such a request he was only too willing to accede. While they were prompt in their denunciations of frauds at elections only last January, they now insist that when such frauds are perpetrated in their interests, we shall not only have no redress for our grievances, but shall even quietly submit, without daring to appeal either to the courts of law or to the common sentiments of our people. Their immediate organ is the New Orleans Times, the proprietor of which was recently charged by Lieutenant-Governor Pinchback, from the senate chair, with having besought, at midnight, an interview with the latter for Mr. Warmoth, and with having, a few minutes later, waited in another room while Mr. Warmoth offered the lieutenant-governor a bribe of $50,000 to join in the conspiracy.

The same proprietor is also under inquest before the legislature as having received $80,000 in State warrants, without due appropriation, for supporting Warmoth. Whether the delegation is, with such an organ, removed from the basis of "party associations" or combinations, and whether it is animated with a becoming spirit toward the Federal Government and its courts, may appear from the following few extracts among many in that journal during the past fortnight. Exhibit C, the first article, relates to the delegation itself. Still further, to reveal the malevolence of the times, I submit, in the exhibit marked D, editorial articles and excerpts published at different dates, and but for the mutilations of bound files of the sheet, almost daily assaults of an unseemly character upon the administration through the past four years could be presented. In token that the attempt made to forestall the determination by the regular election board, and to seat upon the irresponsible certificate of the State register municipal officers in New Orleans, was an audacious violation of law, I have to cite the opinion of no less a lawyer than Christian Roselius, the leader of the Louisiana bar, invoked by Mayor Flanders, Exhibit E. In the haste of preparing this letter, I have omitted to state many facts which would more thoroughly establish the mischief of which the delegation are apologists. I am satisfied, however, that enough has been said to suffice your immediate requirements, and have the honor to remain,

Very respectfully, your obedient servant,

S. B. PACKARD,
President State Central Committee.

Hon. GEORGE H. WILLIAMS,
Attorney-General.

EXHIBIT A.

STATE OF LOUISIANA,
OFFICE OF STATE REGISTRATION OF VOTERS,
New Orleans, November 2, 1872.

SIR: In reply to your communication of date, I must respectfully decline compliance with your request to appoint one commissioner of election at each polling-place, from the republican party, at the general election to be held November 4, 1872.

In regard to your second request, I have the honor to inform you that the list of polling-places in this parish will be published in the official journal and other papers to-morrow, 3d instant.

Very respectfully,

B. P. BLANCHARD,
State Register of Voters and Supervisor of Registration, Parish of Orleans.

Hon. S. B. PACKARD,
President State Republican Committee.

EXHIBIT B.

[Confidential.]

STATE OF LOUISIANA,
OFFICE OF STATE REGISTER OF VOTERS,
New Orleans, October 24, 1872.

SIR: In addition to the instructions contained in Circular No. 8, from this office, you are instructed—

1st. In counting the ballots after election, count first the votes cast for presidential electors and members of Congress, keeping separate tally-lists on the Form No. 1, pro-

vided for that purpose, and making up and completing the statement of votes for each poll, upon Form No. 1. Then close the box, reseal it, and proceed in a similar manner, until all the national votes have been counted. Then proceed with the counting of the State and parish votes, bearing in mind the fact that the United States supervisors of election and deputy marshals have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish votes.

2d. As soon as the count in each case is completed, telegraph the result to this office at once. Should there be no telegraph office at the court-house, dispatch a messenger by the quickest route to the nearest telegraph station.

3d. The stationery, &c., furnished for each parish is to be equally distributed among all the polling-places, and at least one copy of the election laws must be furnished to each poll.

Respectfully,

B. P. BLANCHARD,
State Register of Voters.

L. E. BENTLEY, Esq.,
Supervisor of Registration, Parish of Ascension.

EXHIBIT C.

[From the New Orleans Times, December 15, 1872.]

GOD SPEED!—It is now perfectly plain that the radicals, both here and at Washington, are using every energy toward allaying popular excitement by stifling the voice of remonstrance. Naturally feeling that the result of a popular investigation must result not only in total discomfiture, but that it will also excite the ire of all patriotic people of the country, no pains will be spared either in the way of intimidation or conciliation to smother up the outrage perpetrated on our liberties. Even Attorney-General Williams fully betrays this in his anxiety regarding the committee appointed to visit Washington; he can withstand anything but that. He knows that Congress adjourns on December 20, and if he can only delay their arrival until that event has passed, the administration will be sure of their victory. This is why he advises Colonel McEnery so pertly and pointedly on the subject; this is why he, oddly enough, takes such prompt measures to answer the memorial to the same purport. "Complain as much as you please, only keep away from Washington until after Congress adjourns," is the plain and only interpretation to be given to Mr. Williams's dispatches. Now, fellow-citizens, this should not and must not be allowed. After having been despoiled of our liberties, you must not permit yourselves to be intimidated from protesting. General Grant, by virtue of his power, can do many arbitrary things, but he cannot shut the door of Congress in your face; he cannot prevent the Supreme Court from taking cognizance of your case, and he cannot interdict a pure and fair exposition of the outrages he has sanctioned in Louisiana from being laid before the American people. Strong as our enemies have been in carrying out their schemes by virtue of trickery combined with brute force, here is a fatal element of weakness developed which Mr. Williams's petulent haste fully demonstrates. Here is the rift in the cloud of your troubles through which the sunshine of restoration is to be seen; here is the vulnerable spot in the brazen armor, through which the weapon of truth is to pierce on its fatal mission. We can therefore assure the committee that their mission, if not delayed, promises the most auspicious results. The gentlemen composing it plainly have it in their power to accomplish what every other agency invoked in our defense has failed to do. Let them depart to-day, bearing with them not only the destinies of our State, but the earnest prayers and good wishes of its people; let the same people take pains to be at the depot to cheer them on their mission. The voice of remonstrance, it appears, is already echoing through the portals of the White House, and ere long its thunders will be re-echoed from every hill-top in the land. It is not the province of truth and right to remain pulseless and powerless at the foot of wrong and oppression; the whole tone and temper of the civilization we live in renounces such a fatility. Therefore, keep the agitation alive, and determine that the apathy which has heretofore been our curse, and which is still our reproach everywhere, shall no longer paralyze our efforts. Be of good cheer, citizens; your committee commenced, represents a great outraged principle; beginning, it will soon grow into a crusade more potent to check usurpation than all the futile efforts lately wasted on a fruitless campaign. Little dangers often prove more serious than great ones, and so the administration is destined to learn to its cost.

[New Orleans Times, December 15, 1872.]

CARTHAGO EST DELENDA.—It is impossible that the American people can be kept long ignorant of the facts or indifferent to the wretched condition to which this State and people are reduced by the recent outrages perpetrated on them by a corrupt ring of political adventurers, aided by a judicial confederate and the arms of the United States.

This is the government which has been forced upon the people of the State of Louisiana, through an order in chancery of a petty judge, enforced by the arms of the Federal Government; and these are the facts, under which this outrage has been consummated, upon which the American people must now declare their convictions and judgment.

If such transactions can obtain their approval and support; if the precipitate and evidently ignorant sanction given by the authorities at Washington be sustained by them, then is the empire inaugurated in the place of the once proud republic, and Louisiana converted from a rich and prosperous State into a negro province, ruled by the satraps of the central authorities.

[New Orleans Times, December 8, 1872.]

GIBBETED.—The order of Judge Durell, a petty judge of the United States, the pliant tool and instrument of the corrupt and unprincipled ring of partisan tricksters, who for years past have kept this city in a state of revolution and anarchy, is applauded by the pimps and pensioners of the custom-house as the emanation of a lofty courage and patriotic spirit. The courage referred to is that which is commonly designated Dutch courage, and the spirit which inspired such heroism may be obtained at any corner grocery.

No one questions Judge Durell's decision of the case argued before him. Contemptible as are the reasonings and feeble as are his efforts at logical deduction in the judgment, we should not, in the exercise of our duty and a proper respect for the incumbent of a judiciary seat, regard it within our province or right as citizens to impugn the motives or denounce opinions therein expressed.

But it is for the midnight, burglarious assault upon and occupation of the State-house, done by his order; it is for the flagrant misstatements and usurpations expressed in that order: it is for the indecent refusal to hear a motion relating to that order, respectfully asked by a solicitor in his court; it is for his assumption of the duty of maintaining the peace, a duty nowhere assigned to him by law, and exercised in contempt of the authority of the lawful peace officers of the State—that such order issued at midnight and before the rendition of a judgment in a case pending, and executed by the soldiers of the United States Army, before even an attempt had been made by the civil power. It is for these acts he deserves, and we fervently hope he will be constitutionally gibbeted before the American people, as the object of their eternal scorn and detestation. No man so recreant to his true duty as a judge, and so false to freedom, can retain, in the slightest degree, the respect and confidence of a liberty-loving people.

[New Orleans Times, December 9, 1872.]

THE SITUATION AND THE DUTY OF MANHOOD.—It will be seen that Judge Durell still persists in his maudlin madness. The conspirators having, in a caucus held in some dark corner of the custom-house, made up a list of the most ignorant and corrupt members of their own wing to be found in the State, and, regardless of the only returns which have ever been made of the last election—returns showing overwhelming majorities against their ring—Judge Durell ordered their installation, and recognized them as the sovereign power of the State of Louisiana, and enjoined all other, especially those who hold the legal and notorious returns, from meeting as a legislature.

We trust that this injunction will be disregarded, as the ebullition of a delirious and unscrupulous assault on the liberties and rights of this people. The freeman who shrinks before such an order is faithless to his State and the people who elected him.

If the regularly-elected legislature of the State of Louisiana meets to-day, in accordance with the governor's proclamation, Judge Durell will enjoy the exceptional honor of having his authority treated with more general contempt than ever fell to the lot of a judge since the days of Jeffreys. He will probably enjoy it; but, as the old woman says, there is no accounting for tastes.

Anna Dickinson's famous question, "After Grant, what?" can now be satisfactorily answered. After Grant—Durell.

If any among the people of Louisiana still hug to their souls the impression that this is a land of liberty, let them dismiss that idea forever. Ruthlessly despoiled of their franchise, their State-house in possession of United States troops, and their government interdicted from exercising its functions, the less they indulge in any such ridiculous fallacies the better. No people ever breathing God's air were more essentially slaves than they are to-day, since where the judiciary is subserved to political absolutism there is no freedom existent even in name.

Judge Durell, dictator though he be by the force of his injunctions, backed up by United States bayonets, has yet limits to his powers. He can enjoin the acts of all the people of this State, but he cannot enjoin their opinion of Judge Durell. He cannot enjoin them from regarding him as a pliant tool of despotism who does not hesitate to prostitute the judicial ermine to partisan purpose. He cannot prevent them drawing a parallel between his own ideas of right and wrong and those of his prototype, the English Jeffreys. He cannot enjoin them from seeing in his conduct all the impulses of a Cataline and Titus Oates combined. Nor in his attitude the shameful pride that rejoices in earning the enmity of his contemporaries, thus pointing one of the most iniquitous morals that ever blackened the pages of history.

[New Orleans Times, December 8, 1872.]

"HUNG BE THE HEAVENS IN BLACK."—An occasion more deeply solemn, more sadly suggestive of the march of irresponsible and aggressive authority than that which at present commands the attention of our people, never before occurred in the history of Louisiana. In the checkered annals of the past there are many records of calamity to the people of this State—records in which war, flood, and pestilence have prominently figured—but such dispensations were always met with the heroism of high manhood, and that spirit of resignation which is one of the most noted attributes of Christian civilization. While forced to bow to the inevitable, our people cannot witness unmoved the encroachments on their political and civil rights perpetrated during the past few days in the prostituted names of law and liberty. After years of misrule, brought on and sustained by Federal interference, they had at last hailed what they considered the dawn of a better day, and, in the honest exercise of their electoral prerogatives, had secured the return of reform legislative and administrative officers. But the spoilers and conspirators looked on the triumph with alarm. They longed for the plunder which, with bandit audacity, they had so long appropriated to their own behoof, and swore in their wrath that the triumph which the people, through the ballot, had secured, should be wrested from them through the decree of a judicial Jeffreys and the resistless force of the unthinking bayonet. This oath, joyfully registered by the arch-fiend in Hades has been carried out, thus far, to the very letter. Conspiracy, fraud, and usurpation are now in the ascendant, and justice, fled to brutish beasts, wallows darkly in the mire of corruption.

Fearful of anarchy, and incapable of righting their wrongs through revolution, the people, still hoping against hope, are now called upon to make their protest against fraud in a manner so solemn and impressive as to arrest the attention not only of the President at Washington, but of the friends of republican self-government in this and other countries.

The fact that the radical ticket was largely and honestly defeated in the late election, only knaves and conspirators will pretend to doubt. Nor can there be any question as to the base radical attempt to reverse the popular decree, and defraud the people of the fair and constitutional fruits of victory. These are facts so patent that he who runs may read. With Federal courts and bayonets against us, resistance is useless. We must then resort to some means—the best available—to reach the great heart of the American people and find in it our ally. Noisy, boisterous remonstrance will not avail.

Let us make Monday a day of mourning and of solemn protest. "Hung be the heavens in black." Let our enemies feel that the public finger is pointed at them, and the public conscience has recorded its anathema. Let the stores be closed. Let the hum of business for one day be checked. Let the church-doors be opened, and prayer

ascend to the King of kings. Our case is one in which we are helpless without the aid of the Mighty. If a protest thus solemnly and sincerely enunciated against the encroachments of unauthorized oppression and corruption be not effective, then is American liberty a myth, and republican self-government a base delusion! If liberty in this land is to be buried, let Monday's meeting be a funeral.

THE CROWNING INFAMY.—The returning board created by Judge Durell to canvass the election returns for members of the legislature has illustrated the atrocity of this conspiracy of the custom-house. The installation of such a legislature, with Kellogg for governor and a venal negro for lieutenant-governor, will be the death-knell of all reform, progress, and prosperity in this State. It will be the blight and ruin of Louisiana. It will deliver the small remnant of our property and interests into the hands of the vile crew, recruited with new and half-famished wolves.

[New Orleans Times, October 29, 1872.]

Now, as to Grant's policy. What is it? Colonel Williamson says it is "the grand unity of the country and the Government." We say it is the unity of centralization and of force; the ambition to make all military and civil authority center in his person; the lawless greed of avarice; the ruthless rule of rings; the weak nepotism which sacrifices competency to relationship, and the interests of the country to clanship in its basest form.

Some marvel much that Colonel Williamson should become enamored of such a policy. Few southern men, with such antecedents as his, could be found to accept Grant and Grantism as he has accepted them; hence, the question arises whether he, too, has not been taken to the top of some exceedingly high mountain, and discovered therefrom a political or professional Canaan, through which railways stretched to the east and to the west, and streams meandered, "whose foam is amber, and whose sands are gold."

To the yielding members of his political and military family Grant is sufficiently grateful. While chiding any approach to independence on their part, he has little hesitancy in billeting the faithful on the public crib. All that he asks is, that his own acquired filthy lucre and "the mighty space of his large honor" be not touched by the operation. He likes his country well, his family better, and himself best. These are the degrees of his political and constitutional comparison. The first he likes positively, for its beneficence; the second comparatively, for blood and service; the third superlatively, for in that he eats and drinks and smokes, receives gifts, indulges his appetite, and is ambitious of continuing a rule which has run so near to ruin.

Yet Colonel Williamson declares for Grant!

[New Orleans Times, July 31, 1872.]

Never before did the Chief Magistrate of the republic occupy a position so low as that now held by Grant. The feeling of distrust and dissatisfaction against him is all but universal, and would be entirely so, but for the influence of interested officials and debased politicians. Analyze the popular cry, "Anybody to beat Grant," and in it will be found the very superlatives of condemnation. This condemnation is, to the popular mind, the legitimate result of that stubbornness and stupidity which have been the prime characteristics of the Grant administration, and which, in case of a re-election, would be maintained in a still more exaggerated form for another term. Hence the cry, "Anybody to beat Grant!" *He can no longer be trusted in the high position he has disgraced.* His stubbornness and stupidity must be got rid of at any price.

[New Orleans Times, October 18, 1872.]

GRANT AND GRATITUDE.—The New York Evening Post still urges the election of the greedy Grant on the score of gratitude. It contends that the republic owes him an immense amount for the sacrifices he made on her behalf, and should wipe out by unparalleled magnanimity that suspicion of republican ingratitude which has passed into a proverb. Before admitting the full force of the argument as stated, it might

not be unprofitable to inquire whether the country is really indebted to Mr. Grant. Granting that he was fortunate enough to receive the sword of Robert E. Lee, to whom is gratitude for the position due through which he achieved that honor? Grant is no Cincinnatus, taken from the plow to redeem the fortunes of a state, and who, after performing his great work, returns to his humble duty. He is Ulysses. He was taken ten years ago from a tanner's bench, where he made, perhaps, $800 per annum—independent of solids and fluids—and was placed at the head of the largest army that ever was gathered together in modern times. The instruction which fitted him for this position was paid for by the republic; the questionable propriety of placing in such a position a man possessed of but a single military virtue was a matter determined in his favor by the republic. How far his individual efforts were successful in bringing the war to a conclusion has not yet been determined by military critics, but the popular conviction entertained by all, save his special political friends, is by no means favorable to a high award. He has, however, not been dealt with ungratefully, even admitting that the critics are in error, and that he is possessed of rare soldierly elements beside that of bull-dog tenacity of purpose. He has been presented with houses at Galena, Washington, and Long Branch; and with stocks and bonds to an unlimited extent. On him was bestowed the highest civil office in the gift of the American people. He is waited on by servants in livery, driven about at the public expense in a gilded coach; he is supposed to be slightly interested in gold and other corners, and he has quartered on the country an innumerable nepotistic host—and all this is tolerated to show that republicans and the republic are not ungrateful. Is it necessary to go still further? *Is it essential that the people shall humiliate and impoverish themselves for four years longer to prove their gratitude for Grant? We trow not. He has had enough.* Let him step aside, that gratitude may find some more legitimate outlet. Let Greeley take his turn.

[New Orleans Times, July 29, 1872.]

Such are some of the many disgraces which have been brought on this proud republic *by the great folly of elevating to its Chief Magistracy a boorish soldier, whose ignorance of the laws, usages, and policies of nations and the duties of government is only equalled by the perversity of his favoritism and the intensity of his egotism. It was this folly which the mad Roman emperor so bitterly satirized by investing his favorite charger with the imperial purple.*

[New Orleans Times, October 25, 1872.]

The re-election of General Grant, should such a misfortune occur, will virtually indorse every step he has taken outside the Constitution and secures to him every power he has wrongfully usurped. His future administration, judging by the past, is likely to be the most corrupt ever experienced. The same unwarranted means used to secure a second term may be quite as unscrupulously used to enforce a third, and beyond that no patriotic eye dare penetrate. Whether the people will ever be ready to follow Mr. Schurz's advice, given at the same time, to "fight fire with fire, and force with force," is extremely problematical; as a general thing it is only the poor who rebel; the prosperous never. No doubt our form of government is destined to some changes, but for a generation at least, these will tend toward centralization and consolidation, aiming more at the perfection of a strong nation than a free people.

[New Orleans Times, October 29, 1872.]

The history of radicalism in the South is a history replete with recitals of audacious fraud, unblushing corruption, and reckless disregard of the rights of organized communities. State governments have been overthrown, and city governments have been subverted, in order to satisfy the rapacity of the leaders and organizers of the radical party. Of that party Mr. Kellogg was, and still remains, one of the most conspicuous chieftains. *He is the chosen candidate of the custom-house party, which has disgraced our State, corrupted our legislature, and reduced the State to the verge of bankruptcy and ruin.* If it is once more successful, chaos will come again. Whatever is bad in our condition will be made worse. Whatever remains of hope for improvement will be utterly crushed out and destroyed. No man that professes to wish for reform, in the city or in the State, can vote for the Kellogg ticket. If there is a man for whom a national reformer cannot vote, that man is Senator Kellogg. If there is a man for whom a State reformer can-

not vote, that man is Senator Kellogg. If there is a man for whom a city reformer cannot vote, that man is Senator Kellogg. He combines in his own attitude all that there is of evil in the past and of danger in the future. *He is the chosen instrument of Grant to carry this State against the national reform party.* He is the trusted agent of the custom-house party to perpetuate the disgraceful rule of corrupt legislative rings. He is the ally through whom the radicals expect to gain possession of the city and parish government, in opposition to the wishes of the public, to be expressed at the polls. While reformers are discussing the best means of re-establishing the credit and prosperity of the city, let them not forget that all will be vain and futile, unless they defeat the Kellogg ticket in its conspiracy against the State.

[New Orleans Times, July 12, 1872.]

THE CANDIDATES.—The Boston Globe, an out-and-ont administration paper, intimates that "Grant is to be elected not for himself, but as the representative of great and worthy ideas." It finds evidence of this "in the fact that personally he has no popularity, no individual magnetism, attracts no one to him by sympathy of taste, occupation, or thought," and that he is "too taciturn and engrossed to make followers in the light of personal friendships."

Others will find in these same facts evidence *that he should not and will not be elected. Wrapped up in selfishness, there is nothing in his nature or conduct calculated to elicit a generous outburst of popular sympathy.* Four years ago he was elected *through a false impression.* He had been credited with the greatest successes of the war, and under an idolatrous spirit of hero-worship, was elevated to a position for which he had not the slightest natural or acquired fitness.

In the isolation of military dictatorship, his silence was regarded as golden and his stolidity passed for wisdom. Even Lincoln, shrewd observer as he was, found virtue in his owlish pertinacity and dogged obstinacy, and concluding that there must be some peculiar virtue in the whisky that he drank, recommended other generals to purchase some of the same brand.

In the camp he was too far removed from the public, and even from the armies he controlled, to be closely scanned or fairly judged. The lives of the men he moved as pawns in the game of war were as nothing to him. He sacrificed them often, without necessity and without compunction. His greatness as a soldier rests chiefly on the fact that so great a soldier as Lee surrendered to him; but when resistless force on the one side, and exhausted resources on the other are fairly considered, the merits of the achievement are dwarfed amazingly.

Thus it appears that when formerly elected the man of the bayonet had his few claims to an honest personal popularity as he has at present. The unknown rather than the known of his war merits elected him; the imaginary rather than the real made him the successful hero of the hour. That era has however passed. The gilded threads of the epaulette have faded; the blood on the bayonet has dried, leaving nothing but a purple stain. *Grant now is simply Grant, with no magnetism to attract, no ties but those of official greed, and associated interest against the people, to commend him as his own successor.*

EXHIBIT E.

OPINION OF HON. C. ROSELIUS.

NEW ORLEANS, *November* 29, 1872.

Hon. BENJAMIN F. FLANDERS,
Mayor and the Administrators of the City of New Orleans.

GENTLEMEN: You request my opinion on the question whether the certificate of B. P. Blanchard, State registrar of voters and supervisor of registration of the parish of Orleans, is a sufficient authority to entitle the mayor and administrators elect to qualify and enter on the discharge of the duties of their respective offices.

That certificate is as follows:

"STATE OF LOUISIANA,
"OFFICE OF STATE REGISTRAR OF VOTERS,
"*New Orleans, November* 27, 1872.

"Hon. L. A. WILTZ:

"DEAR SIR: In reply to your request of this date, I have the honor to inform you that from the most reliable sources of information accessible to this office, the vote for

the office of mayor of the city of New Orleans, cast in this parish at the general election of the fourth instant, was as follows:

"L. A. Wiltz received 23,896 votes; W. R. Fish received 12,984 votes.

"I am, sir, very respectfully,

"B. P. BLANCHARD,

"*State Registrar of Voters and Supervisor of Registration, Parish of Orleans.*"

It is perfectly clear that this certificate does not entitle the Hon. L. A. Wiltz to enter into the office of mayor. Mr. Blanchard has no authority, officially, to issue such a certificate.

The election took place under the law approved on the 16th March, 1870, entitled "An act to regulate the conduct and maintain the freedom and purity of elections," &c., the fifty-third and fifty-fourth sections of which provide "that immediately upon the close of the polls on the day of election the commissioners of election at each poll or voting place shall seal the ballot-box by pasting slips of paper over the key-hole and the opening in the top thereof, and fastening the same with sealing-wax, on which they shall impress a seal, and they shall write the names of the commissioners on the said slips of papers; they shall forthwith convey the ballot-box so sealed to the office of and deliver said ballot-box to the supervisor of registration for the parish, who shall keep his office open for that purpose from the hour of the close of the election until all the votes from the several polls or voting places of the precinct shall have been received and counted. The supervisor of registration shall, immediately upon the receipt of said ballot-box, note its condition and the state of the seals and fastenings thereof, and shall, when in the presence of the commissioners of election and three citizens, freeholders of the parish for such poll or voting place, open the ballot-box and count the ballots therein, and make a list of all the names of the persons and offices voted for, the number of ballots in the box, and the number of ballots rejected, and the reason therefor. Said statement shall be made in triplicate, and each copy thereof shall be signed and sworn to by the commissioners of election of the poll, and by the supervisor of registration. As soon as the supervisor of registration shall have made the statement above provided for for each poll in his precinct or parish, and it shall have been sworn to and subscribed as above directed, the supervisor of registration shall inclose in an envelope of strong paper or cloth, securely sealed, one copy of such statement from each poll, and one copy of the list of persons voting at each poll, and one copy of any statements as to violence or disturbance, bribery or corruption, or other offenses specified in section twenty-nine of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes, and shall send such package by mail, properly and plainly addressed, to the governor of the State. The supervisor of registration shall send a second copy of said statement to the Governor of the State by the next most safe and speedy mode of conveyance, and shall retain the third copy in his possession.

"SEC. 54. *Be it further enacted, &c.*, That the governor, the lieutenant-governor, the secretary of state, and John Lynch, and T. C. Anderson, or a majority of them, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers.

"The returning officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"'I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election. So help me God.'

"Within two days after the closing of the election, said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the supervisors of registration, and make returns of the election to the secretary of state. They shall continue in session until such returns have been completed. The governor shall at such meeting open, in the presence of the said returning officers, the statements of the supervisors of registration, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be prima facie evidence in all the courts of justice, and before all civil officers until set aside, after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected.

"The governor shall, within thirty days after, issue commissions to all officers thus declared elected, who are required by law to be commissioned."

Here the duties of the supervisor of registration and those of the returning officers of the election are pointed out in language too clear to be misunderstood. Until a return of the election has been made in the manner here directed, the successful candidates cannot claim the office to which they have been elected.

Even after the return of the election has been made in legal form, the officers elected cannot enter on the discharge of the duties of their offices until they have been commissioned by the governor.

By the twenty-eighth section it is provided "that the governor shall commission all officers elect, except members of the general assembly and the governor."

It cannot be said that this section refers to State officers alone, for the first section of the act provides, in express terms, "that all elections for State, parish, and judicial officers, members of the general assembly, and for members of Congress, shall be held on the first Monday in November, and said elections shall be styled the general elections.

"They shall be held in the manner and form and subject to the regulations hereinafter prescribed, and no other."

A commission issued by the governor before the returns of the election have been made in legal form is a mere nullity and can produce no legal effect whatever. But in this instance no commission has been issued.

The act passed by the last legislature, entitled "An act to regulate the conduct and maintain the freedom and purity of elections," &c., was not in force when the election took place, and therefore has no application to it. The idea that a part of an election may be regulated by one law, and another part by a law approved subsequently, is, in my opinion, entirely inadmissible.

Besides, I do not think the governor has the power to approve a law passed by a legislature which has ceased to exist; he could certainly not return such a law with his objections to the new legislature; and the approval by the governor on the 20th of November, 1872, could not revive it. The Supreme Court went quite far enough when it decided that the governor had the right to approve a law after the adjournment of an existing legislature. But I do not think that that high and intellectual tribunal will ever hold that the approval by the governor can give life to a law which has ceased to exist before such approval.

But if the act could be considered in force and applicable to this election, the objections to the certificate of Mr. Blanchard would be equally fatal. By the forty-third section of that act it is provided "that immediately upon the close of the polls on the day of election, the commissioners of the election at each poll or voting place shall proceed to count the votes, as provided in section thirteen of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, and the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans, to the Secretary of State, by one or all such commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling places, to consolidate such returns, to be certified as correct by the clerk of the district court, and forward the consolidated returns with the originals received by him to the returning officers provided for by section two of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section twenty-six of this act, if any there be, together with all memoranda and tally-lists used in making the count, and statement of the votes."

And by sections two and three it is enacted "that five persons to be elected by the senate, from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering on their duties, take and subscribe to the following oath before a judge of the supreme or any district court: I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God.

"Within ten days after the closing of the election said returning officers shall meet in New Orleans to canvass and compile the statement of votes made by the commis-

sioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall, at such meeting, open, in the presence of the said returning officers, the statements of the commissioners of election, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The return of the election thus made and promulgated shall be prima facie evidence in all courts of justice, and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

"SEC. 3. *Be it further enacted, &c.*, That in such canvass and compilation the returning officers shall observe the following order: They shall compile, first, the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever, from any poll or voting-place, there shall be received the statement of any supervisor of registration or commissioner of election, in terms as required by section 26 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statement of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if, from the evidence of such statement, they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified voters thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns; provided that any person interested in said election by reason of being a candidate for office, shall be allowed a hearing before said returning officers upon making application within the time allowed for the forwarding of the returns of said election."

Section twenty-five provides "that it shall be the duty of the governor to commission all officers elect except members of the general assembly, the governor, and members of the police jury."

To enable a person to enter into an elective office, three facts must concur, namely: First, an election; secondly, a return of the result of the election; and, thirdly, the qualifying for the office, by taking the oath, &c. It has been suggested that provisions of the law approved on the 16th of March, 1870, entitled "An act to extend the limits of the parish of Orleans, and to change the boundaries of the parishes of Orleans and Jefferson," &c., control the election of the mayor and administrators of the city of New Orleans. The only sections of that law in which any reference is made at all to the election of these officers are the fourth, fifth, and sixth, which are as follows:

"SEC. 4. That the government of the city of New Orleans and the administration of its affairs shall be vested in the mayor and seven administrators, to wit: One of finance, one of commerce, one of improvements, one of assessments, one of police, who shall be *ex officio* a member of the board of metropolitan police, one of public accounts, and one of the waterworks and public buildings, with administration and executive functions; and said mayor and administrators shall be appointed or elected as hereinafter provided, and shall form a council of the city of New Orleans. The governor shall, by and with the advice and consent of the senate, appoint the mayor and the seven administrators, who shall hold their offices until the first Monday of November, 1871. There shall be an election for the administrators of finance, improvements, public accounts, waterworks, and public buildings, and every two years thereafter; said officers,

when elective, shall be elected at large by the qualified voters of the city of New Orleans, as constituted by this act.

"SEC. 5. *Be it further enacted, &c.*, That the qualifications of the mayor and of the administrators of departments shall be as follows: They shall be qualified electors, and shall be citizens of the State, and for one year residents of the city of New Orleans; they shall, before entering upon the duties of their offices, respectively take and subscribe before the court having probate jurisdiction in the parish of Orleans, or before the judge thereof in chambers, the oath prescribed by article 100 of the constitution of the State; also, that they possess the qualifications above required, and will faithfully perform the duties and discharge the obligations imposed upon them by this act, and, with the exception of the mayor, shall moreover give bond, as hereinafter more particularly prescribed and directed.

"SEC. 6. *Be it further enacted, &c.*, That on the second Monday following the day of their appointment or election, the council shall hold its first meeting in the city-hall, at which the mayor and administrators of the departments elect, having presented and filed their certificates of election and qualifications, as herein provided, shall enter upon the discharge of their duties as specified in this act, and their predecessors shall turn over to them all books, papers, property, money, and accounts pertaining to their offices and to the city of New Orleans."

These sections, it is seen, only refer to the time when the election shall take place, to the qualifications of the mayor, and the period when they shall enter into office.

This act was amended by an act entitled "An act to amend an act to extend the limits of the parish of Orleans, &c., approved March 16, 1870, and to prescribe additional regulations for the government of the corporation of the city of New Orleans, approved March 18, 1871." In the second section of this law, it is provided that—

"The elections for the mayor and the several administrators shall be held biennially, at the time of the elections for members of the general assembly; and they shall be chosen at large by the qualified voters of the city of New Orleans. All vacancies occurring by resignation, death, or any disability, at any other time than the general election, shall be filled by appointment of the governor, by and with the consent of the senate, when in session, or submitted for such advice and consent at its next session: provided, that should the number of vacancies, or other cause or reason, justify the expense of holding an election to fill the vacancies or positions held by appointment, the governor or the legislature may call an election for that purpose. Vacancies may be temporarily filled until action of the governor, by the administrator of finance, acting as mayor *pro tempore;* and the mayor may assign any administrator to another department, *ad interim;* and the same course shall be observed in case of temporary absence or sickness. And all officers herein provided for shall hold their offices until their successors are duly elected, or appointed and qualified."

Nothing is said in either of these acts as to the mode of holding the election or its return. The questions, therefore, by whom the election is to be ordered, how it shall be conducted, and who shall make the returns, must be answered by the act of the 16th of March, 1870, or by the act approved on the 20th November, 1872, if the latter act, contrary to my opinion, can be considered as a valid law.

I am, gentlemen, very respectfully, your obedient servant,

C. ROSELIUS.

EXHIBIT F.

Personally appeared before me, the undersigned commissioner, Joseph W. Jones, who deposes and says as follows: I was a member of the democratic parish executive committee from the ninth ward of the parish of Orleans, when, on the night of the 2d of November, 1872, there was a resolution passed by said committee appropriating the sum of $100 for the purchase of about three hundred registration certificates. This money was given to Mr. William Stevenson, the other representative from the ninth ward, in said committee, to purchase the said certificates with. On the day of the election (November 4, 1872) I saw about three hundred registration certificates in the possession of the said William Stevenson, who stated to me that he had paid the money appropriated by the committee, and for which he had received these papers; and said Stevenson gave me to infer that he had got these certificates from the supervisor of registration of the ninth ward.

At about 3.30 p. m. on said election day, I asked said Stevenson what had been done with the said certificates, and he stated to me that they had all been voted for the liberal democratic fusion ticket. I was a candidate on the fusion ticket myself, for constable of the fourth justice court, and was returned elected by both boards of canvassers.

About 4.30 p. m. on said 4th of November, the said Stevenson told me that he

had been to the rooms of the committee for the purpose of getting $100 more from the said committee, to purchase one hundred and fifty more registration certificates, which he said he did buy, at the same time showing me a bundle of certificates, and which were also voted for the liberal democratic fusion ticket.

J. M. JONES.

Sworn to and subscribed before me this 16th day of December, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

UNITED STATES CIRCUIT COURT, CLERK'S OFFICE, *District of Louisiana, ss:*

I certify that the above and foregoing is a true and correct copy from the origina this day exhibited to me.

Witness my hand and seal of said court, at the city of New Orleans, this 16th December, 1872.

F. A. WOOLFLEY,
Clerk.

EXHIBIT G.

UNITED STATES OF AMERICA, *State of Louisiana, ss:*

This day personally appeared before me, the undersigned commissioner of the United States for the State of Louisiana, Fred. L. King, a resident of New Orleans, who, being duly sworn, deposes and says that on or about the 23d of October, 1872, one B. P. Blanchard, State register of voters, one Miles Sharkey, J. C. Golding, Thomas Connell, and one Dr. Stephens, did combine, confederate, and conspire together to cheat and defraud the voters of the parish of Saint James, in said State, of their rights of having their voters counted and returned and properly certified at an election held on the 4th day of November, 1872, in said parish, as the law required; and in pursuance to said conspiracy, the said defendant did suppress and fail to make the true and correct return of said election; and said defendants, in furtherance of said combination and confederacy, did prepare, and caused to be prepared, four ballot-boxes for said parish, to be used and stuffed, so as to deprive and defraud the voters of said parish; and did there and then, at two of the polls in said parish, change and alter the ballots of the voters at said places, all in violation of the provisions of the acts of Congress in such cases made and provided.

FRED. L. KING,
159 *St. Andrew's street, New Orleans.*

Sworn to and subscribed before me, December 10, 1872.

F. A. WOOLFLEY,
United States Commissioner.

A true copy of the original.

F. A. WOOLFLEY,
United States Commissioner.

EXHIBIT H.

Gilbert M. Husted, of East Baton Rouge, being duly sworn, deposes and says:

Question. What position did you hold on the 4th of November last?—Answer. I was appointed United States supervisor for the fifth precinct, parish of East Baton Rouge, the polls being at that time at Port Hudson.

Q. You served as such?—A. Yes, sir.

Q. State what irregularities occurred at the polls, if any.—A. Nothing transpired during the day worthy of note. They seemed to use their utmost endeavors to make it as pleasant as possible while I was there, and, in fact, asked my advice as occasions came up that required it. Those whom they thought had no right to vote were referred to my opinion, as I had been supervisor of registration. In the evening when the polls closed I saw the commissioner that had been appointed at Baton Rouge, and asked him what time he proposed to go to town. He said he thought of remaining about halfway from town all night. In fact, he was asked by several persons the same question and he said he did not know; that he could not decide at present. I got my horse and buggy and went as far as I could, when he came by and said he would ride with me if I had no objection. I said that was just what I would like for him to do. It was then very dark, and Mr. or Lieutenant Rayburn started down with us. We got about, as

near as I can judge, eight miles from Port Hudson, when we were stopped by a party of men. They shot ahead of us across the road, and somebody called out, "McKittrick, are you in the wagon?" He said, "Yes." He got out of the wagon and was gone, I would judge, five minutes, the box being still under the seat. He then came back and I jumped out of the wagon and asked what was the matter. He said, "I am going to stay here all night," at the same time taking the box from under the seat. "You can remain or go to town just as you see fit." "You know my duty," said I; "it is to remain with the box." He then started to the side of the road and I attempted to follow him, when these parties stepped in between us.

Q. Who were these parties?—A. I do not know, and could not recognize them. I then got the horse by the head and turned the wagon and started up a sort of lane, and about fifty or sixty yards, I discovered a small shanty. Then Rayburn got out of the wagon and came up to me and asked what was the matter. I said, you can see as well as myself. He then turned around and his horse started in the direction of Port Hudson, leaving me there alone. I suppose it was about fifteen minutes before Mr. McKittrick came back with the box, stating that he had changed his mind and that it was his intention to go to town, at the same time placing the box in the wagon. We started in the direction of the town together, and were followed by three or four men on horseback until we got within about a mile and a half of the outside limits of the corporation, when they turned and went back. We got into the court-house at Baton Rouge at half past 12 o'clock.

Q. At the close of the polls how were the boxes sealed?—A. The box was sealed by a strip of paper, signed by the three commissioners.

Q. Was it so sealed that if it had been tampered with it could be noticed?—A. No, sir. The way they sealed it was by placing a strip of paper horizontally on each end. I should judge it could be opened. There was one also on the lock.

Q. But in your opinion, was it so sealed that it could be opened without difficulty? A. Yes, sir; without leaving any evidence of its having been tampered with.

Q. When Mr. McKittrick was stopped, did he manifest any concern about it?—A. Apparently he seemed to be very much exercised on his way down, but whether that was a sort of blind, I do not know. Before he got to this place, which was, as I afterward discovered to be, Liggins's, he expressed considerable surprise. There are two roads leading from Port Hudson to Baton Rouge; one is called Plains road, and the other is called Cut-off; when he got to what is called the Plains, which connects with the main road, McKittrick stopped the wagon, and Lieutenant Rayburn being behind, he turned around and asked Rayburn did he know any other road besides the main road that would lead to Baton Rouge. He said, "No, you must take this road." Then McKittrick said, I am very sorry, because I thought we could take some other road without passing the main road—that is, the Bayou Sara road.

Q. About what should you say would be the result from the complexion of the votes cast at that place?—A. Thirty-nine liberal votes, and one hundred and sixty-six——

Q. You kept the tally?—A. Yes, sir. I kept a tally, and I believe it is here.

Q. What was the result of the count?—A. Thirty-two liberal majority, instead of one hundred and thirty-two republican majority.

Q. How could such a result have been obtained?—A. No other way, unless the box was tampered with.

Q. Were you prevented from following the box to the shanty?—A. Yes, sir.

Q. By whom?—A. That is more than I can say.

Q. By how many persons?—A. About ten, I should say.

Q. Were they armed?—A. I could not see.

Q. What was the condition of the box when it reached the court-house, that is as to the seal?—A. Apparently the same as it was when we left the polling-place.

Q. Were you present at the count in the court-house?—A. Yes, sir.

Q. How was that count made? State whether the ticket was counted entirely through, or any division made in the count, from the presidential electors down to the constables.—A. Well, they effected a sort of compromise at that time. They pulled out a ticket, and if there were no scratches they would tally it all the way down. They counted the tickets straight through, and they were tallied accordingly.

Q. He made no separation?—A. No, sir; that was toward the last; I do not know about the first; my box was counted about the last.

Q. Is there a possibility of your recognizing any of these parties that stopped you on the road?—A. Yes, sir; there was one I saw, Hurst, the sheriff of Baton Rouge; he was standing close to the wagon at the time I got out. He was a candidate for sheriff on the liberal ticket.

Q. Where did you vote?—A. At Port Hudson.

Q. Had you marked your ticket so that you could identify it?—A. Yes, sir.

Q. Did you see it come out of the box?—A. No, sir; I did not see it come out of the box.

Q. Were you present at the counting of the vote?—A. Yes, sir; and did not see it.

GILBERT M. HUSTED.

EXHIBIT I.

CHARLES G. PAGE, of East Baton Rouge, being duly sworn, deposes and says:

Question. State what position you held on the 4th of November, 1872.—Answer. I was United States supervisor of elections at Plains, McCartney's store, Fourth ward: I think about seventeen miles from Baton Rouge, in the parish of East Baton Rouge.

Q. What was the conduct of the election on that day?—A. The election was conducted peaceably and orderly throughout the day. The polls were opened at about 10 minutes past 6 in the morning.

Q. Who examined the boxes at the opening of the polls?—A. The three commissioners. They were Edward D. Cheatham, J. R. Tigon, and Dr. D. B. Barrett. Mr. Barrett was not present at the opening of the polls. I was present also and saw the box; it was empty. The boxes were locked after examination. There were two boxes produced; one for the reception of all votes cast under certificates of registration issued by S. S. Brady, and the second box was for the purpose of receiving the votes of all persons under certificates of registration issued by previous supervisors in 1867, 1868, and 1870. This second box was not used. The votes of parties offering to vote under registration papers other than those of Mr. Brady were left with me, and I have them in my possession. As to the reason why they did not use this box, was because the parties offering to vote did not make their affidavits. I do not think there were any justices of the peace out in that ward before whom affidavits could have been made. The polls closed at about 5 minutes past 6 in the evening, and I saw the box sealed. There was a strip of paper used. The box had but one lock, and the strip of paper was pasted over it, bearing the signature of the three commissioners. I noticed that the paper was placed very nearly straight, and I noticed afterward, when they got to the court-house, that it was not so straight as when they placed it there.

Q. Did you follow the box from the polling place to the court-house?—A. No. After they closed the polls I called Mr. Cheatham to me, and told him that as United States supervisor I desired to go with the box. He made no reply, but walked away from me and entered his buggy, and drove at a very rapid rate. I had a very fast horse, and followed them pretty close. In fact, I was right behind them all the time. I suppose we had driven about three or four miles when some five or six men on horseback closed right in between my buggy and Mr. Cheatham's, which contained the boxes. This set me back a little, and not being acquainted with the road, and not knowing where the bridges were, I had to check up a little. When we got about seven miles from the polls they had halted in front of a Mr. Liggins's store. When I left the poll Mr. M. T. Mecheal, democratic United States supervisor, was in the buggy with me. I was pretty close to them when they stopped, and as soon as I stopped Mr. Mecheal jumped out and went into the store. He returned in about two or three minutes, when I inquired of him where Mr. Cheatham was. He said to me that Cheatham had gone on, and was in town he supposed. I inquired of him how, because I was standing near their buggy. He replied on horseback. I then asked Mr. Mecheal if Mr. Cheatham had the boxes, and he answered, yes. Shortly after that Mr. Commissioner Ligon came out of the store, jumped in the buggy, and bid us good night, and started off toward town. I then entered my buggy and drove off at a rapid rate also, but did not know which way he turned. It must have been by some of the cross-roads, because I did not see him any more. I arrived at the court-house nearly five hours ahead of Mr. Cheatham and Mr. Ligon, the commissioners.

Q. Where was the box at the time you stopped at Mr. Liggins's store?—A. I do not know. It must have been in the store, because the buggy was standing there at the time. That is my supposition.

Q. How far behind them were you?—A. Not far. They just had time to get out of the buggy and go into the store before I got up there.

Q. You did not see anything of the box?—A. No, sir. I stood in front of the door holding my horse, and when one of the doors came open somebody shut it quick.

Q. When the door opened could you have seen the ballot-box go in?—A. It was in there already when the door opened.

Q. How many votes were cast at that poll?—A. There were two hundred and eight votes not under Mr. Brady's certificate of registration.

Q. What was the complexion of that vote cast?—A. One hundred and thirty-seven whites and seventy colored, with one doubtful as to the complexion.

Q. What would probably have been the vote from your knowledge of the voters? How would the vote have stood of these two hundred and eight?—A. I should judge about sixty white ahead, or about sixty-five democratic. They claimed sixty majority before the voting was over.

Q. How did the count compare with the result of the count that you had reason to expect from the complexion of the votes cast?—A. About seventy colored.

Q. They would be republican votes?—A. Yes, sir; republican.

Q. And the balance?—A. One hundred and thirty-seven liberal or democratic votes.

Q. What did the count show?—A. In the count there was a discrepancy of five or six votes.

Q. What was the result as established by the count? State the count.—A. There was a democratic majority of about sixty or sixty-five.

CHAS. G. PAGE.

Tabular statement.

Parishes.	White.	Colored.	Remarks.
Ascension	1,511	3,014	Revised registration of 1870.
Assumption	1,874	2,169	Do.
Avoyelles	1,794	2,208	Do.
East Baton Rouge	1,431	1,617	New registration.
West Baton Rouge	397	867	Do.
Bossier	587	1,795	Do.
Bienville	920	713	Revised registration of 1870.
Calcasieu	729	139	Do.
Cameron			Do.
Catahoula	1,017	1,107	Do.
Concordia	296	2,526	Do.
Caddo	1,549	3,139	New registration.
Caldwell	544	586	Revised registration of 1870.
Carroll	718	1,910	Do.
Claiborne	1,377	1,296	New registration.
De Soto	821	1,303	Do.
Feliciana, east	1,100	2,351	Revised registration of 1870.
Feliciana, west	590	2,215	Do.
Franklin			Do.
Grant	630	776	Do.
Iberia	1,149	1,263	Do.
Iberville	743	3,303	Do.
Jackson	1,110	816	Do.
Jefferson, right bank	550	1,440	Do.
Lafayette			Do.
Livingston	766	225	Do.
Lafourche	1,704	1,871	Do.
Morehouse	734	1,358	Do.
Madison	360	2,365	Do.
Natchitoches	1,451	1,906	New registration.
Orleans, (cannot ascertain)			Revised registration of 1870.
Ouachita	912	1,630	Do.
Plaquemines	518	2,703	Do.
Point Coupee	1,070	7,710	Do.
Rapides	1,011	990	New registration.
Red River	441	966	Do.
Richland	599	644	Do.
Sabine			Revised registration of 1870.
Saint Bernard	308	401	Do.
Saint Charles	360	1,850	Do.
Saint Helena			New registration.
Saint James	658	2,068	Do.
Saint John's	817	1,717	Do.
Saint Landry	3,358	4,000	Do.
Saint Mary's	1,100	2,203	Do.
Saint Martin's	1,038	1,019	Do.
Saint Tammany			Do.
Tangipahoa	919	618	Do.
Terre Bonne	1,201	1,608	Revised registration of 1870.
Tensas	386	3,146	Do.
Union	1,832	876	Do.
Vermillion	845	268	Do.
Vernon	457	191	Do.
Washington			Do.
Webster	848	866	New registration.
Winn	758	132	Do.
Total	45,670	74,833	

Natchitoches, the parish, fifty miles long by thirty-five wide. There were but four polling-boxes in the entire parish. Notice given of the polling-places on the morning of the election. Republicans got 1,724 majority in 1870. New registration this year; 1,451 white, 1,906 colored, over 800 not allowed to register. Of registered vote, only 5,018 allowed to vote in this parish; the returning-board threw out all four boxes because of gross frauds, and counted 1,205 for the republican ticket, who made affidavits, with vote attached, under act of 1870, that they were not allowed to vote. This parish is mentioned as an instance of this class of cases; there are very few, however, where the count was made on this basis. In several others boxes were thrown out, stuffing of boxes, changing of ballots, and other frauds being conclusive. The time suffices before mail leaves to-day to go through other parishes in like manner.

East Baton Rouge, new registration because books were destroyed. No authority in law for ordering such registration. New registration showed 1,431 whites, 1,617 colored. Democrats claim it this year by over 250. In 1870 registration showed 1,100 white and nearly 3,000 colored; republican majority in 1870, 1,485. Here several hundred blacks were denied registration. Hundreds of them followed the register from day to day, striving in vain to procure registration. Here several hundred votes were polled in a separate box on registration papers of 1870, where they were not allowed to vote in a regular box; there are quite a number of parishes where a worse showing could be made, but the time suffice. Will tabulate with data soon and forward.

L. B. PACKARD,
Chairman Executive Committee.

EXHIBIT D.

ADDRESSES OF BOTH PARTIES.

A TRUE STATEMENT OF THE LOUISIANA POLITICAL IMBROGLIO.

Certain persons designated as the "committee of one hundred citizens of New Orleans" have published several documents addressed to the President, Congress, and people of the United States, wherein they complain bitterly of some decrees and orders issued by Judge E. H. Durell, of the United States district court at New Orleans, in a controversy brought before him in reference to the last election, under the provisions of the act of Congress of 1870, known as the enforcement act.

The committee having committed the grave error of making statements quite at variance with the facts of the case, the undersigned has undertaken to submit the following strictly true and fair abstract of the matter at issue, based entirely upon legal and official documents, so that, by the perusal of this communication, a correct opinion may be formed of the merits of the case.

For the better understanding of parties unacquainted with Louisiana matters it will be necessary to, at first, enter into some general remarks about the political parties of that State and the connection of Governor Warmoth, the fusion party, and their committee, now at Washington.

For several months before and after the Greeley Cincinnati convention, there were several political parties in Louisiana, viz, 1st The republican party; 2d. The reform party; 3d. The democratic party; and 4th, the liberal party, organized by Governor Warmoth, and composed only of a handful of his office-holders and satellites, and so small indeed that it would not have deserved the name of party, had it not been for the fact of its being managed by Warmoth, whose strength lay in the bad features of the election laws of the State, which, as he says himself in his message of February 5, 1872, "make the machinery one-sided, partisan, and dangerous to the liberties of the people, when wielded by an ambitious executive."

They gave him such an absolute control over the elections that he could make the result of any election to be as he wanted, and that, by their assistance, he has in 1870 seated in the legislature men who had not even been candidates.

The leaders of the political organizations in Louisiana were fully convinced that they could not, single-handed, or even all combined together, carry the election against Warmoth, whom everybody knew to be a very unscrupulous man, ever ready to resort to all kinds of tricks, however illegal, to carry out his purposes.

Hence there was an intense desire from all parties (the republican party excepted) to make an alliance with him: still he was held in such

a contemptible light, that, out of respect for themselves, the majority of the democrats and reformers refused, for a long time, to associate themselves with him, and conventions after conventions were held without any of said parties daring to unite with him and accept his conditions, viz, that he should be elected United States Senator, in January, 1873.

His anxiety for the position is thus explained, viz: by robbing the State treasury and blackmailing all the beneficiaries of the plundering bills and monopolies passed by his legislature, he had got himself so immensely rich that the accumulation of money had no more attraction for him, and his only ambition was to be United States Senator, because of the lofty position, and also because from his seat he could unmercifully attack and annoy President Grant, and in that way satisfy his hatred against him, and take at leisure his revenge of the ignominy General Grant had entailed on him in ordering him to be dishonorably discharged from the service in presence of the whole Army at Vicksburgh.

At last, after a great many negotiations, a compromise was made and a union formed between all the anti-republican elements in the State into one party called the fusion party, on the motto of "anything to beat Grant."

And then, knowing which way he must want the election to go, Warmoth appointed his corps of registrars and supervisors of election, as provided for in the election law of 1870, and under said law the election was held throughout the State on the 4th of November last.

But, if the people of Louisiana did, on that day, go through the form of election, the real election was not to take place until eight or ten days later, through the manipulations of Warmoth in the returning-board.

Hence his superhuman efforts to have in said board only such men as he wanted; hence the fierce contest in which he resorted to the high-handed and revolutionary measures that will now occupy our attention.

We have now arrived to the zest of the controversy, viz, "who is the legal returning-board?"

By the terms of the election law of 1870, under the provisions of which the election of November 4th was held, the election returns have to be made by a returning-board composed of the governor, the lieutenant-governor, the secretary of state, Mr. Lynch, and Mr. Anderson, and it is ordered by section 54 of said act that they should meet within ten days after the election and commence the canvassing of the returns. In obedience to said provision the board met in the governor's office, on the 13th of November; were present all the members of the board except Mr. Anderson. At said meeting Lieutenant-Governor Pinchback and Mr. Anderson were declared to be incapacitated from acting as members of the board because they were candidates at the election, and the chief justice of the supreme court of the State administered the oath of office required by the fifty-fourth section of said election law of 1870 to the governor, to the secretary of state, (Herron,) and to Mr. Lynch, as members of the returning board. Immediately after this, on motion of the secretary of state, (Herron,) seconded by Mr. Lynch, Messrs. Hawkins and Longstreet were elected members of the board to fill the vacancies of Messrs. Pinchback and Anderson.

Just about that time entered in the room a Mr. Wharton, holding a commission of secretary of state, signed by Warmoth, and he, with Warmoth, ignoring Herron as a member of the board, claimed to elect Messrs. Hatch and Daponte to fill the vacancies above mentioned.

Upon seeing such extraordinary proceedings, Herron and Lynch retired from the room.

From that moment commenced the conflict as to which was the legal board; was it Warmoth, Lynch, Herron, Longstreet, and Hawkins? or was it Warmoth, Lynch, Wharton, Hatch, and Daponte?

An amicable arrangement being impossible, the Herron board filed a petition before the eighth district court of New Orleans, praying that the board, claimed to have been organized by Warmoth and Wharton, and composed of Warmoth, Wharton, Lynch, Hatch, and Daponte, be cited to answer and be decreed to be intruders into and usurpers of the office of returning officers of election, and that Warmoth, Lynch, Herron, Longstreet, and Hawkins be decreed to be such returning officers. They also filed a supplemental petition stating that an injunction was necessary, and praying that a writ of injunction be issued against Wharton, Hatch, and Daponte, enjoining them from acting as returning-officers of election, and in any way interrupting or hindering the returning-officers Herron, Longstreet, and Hawkins, in the discharge of their duties of such returning officers.

On the 19th of November the judge rendered the following decision, viz: * * * "I hold that Herron is still secretary of state; that his vote on the 13th of November determined the election of Longstreet and Hawkins to the board; that at all events, whether he was secretary of state *de jure* or not, he was so *de facto*, and that by his vote Hawkins and Longstreet were elected as members of the board.

"An injunction can be made properly as a supplemental proceeding to a suit. The object is to decide who is entitled to exercise the duties and functions of the office. The duties of the returning board are soon completed, and if, pending the issue, the defendants attempt that which renders the suit inoperative, the court may properly issue its restraining order.

"From these considerations the rule *nisi* will be made absolute and the injunction issued as prayed for."

The supreme court of the State in several instances have since incidentally held the returning board, composed of Lynch, Herron, Longstreet, and Hawkins, to be the legal board. They have refused to recognize the commissions issued by Warmoth upon the returns made by Warmoth, Wharton, Hatch, and Daponte, and have in every case recognized the commissions issued upon the returns made by the Lynch board.

From the above, which is almost a verbatim extract of the judicial record in the case, it results that the legal returning board is declared by the State court to be the one composed of Warmoth, Lynch, Herron, Longstreet, and Hawkins; moreover, as can be seen from their several proclamations in the official organ of the State, since the day of the above recited decision, Lynch, Herron, Longstreet, and Hawkins have been canvassing the returns of election, from which the present legislature, now in session, has been organized in the manner provided for by the constitution, the entire city government and the city and State judiciary and parish authorities have been inducted into office, and the whole machinery of the State government set and kept in regular motion according to the requirements of the laws and constitution of the State.

Had any law-abiding and honest man been the occupant of the executive chair at that time, the controversy about the returning boards would have thus and there ended; but Warmoth would not give up his prospects of a seat in the United States Senate, or curb his despotic will to the decrees of the judiciary, and in his madness, in violation of the

constitution and laws of the State, and in contempt and defiance of orders of court, he did, the next day after the above recited judgment, sign a new election law for the purpose of giving it an expost facto or retrospective effect.

This new move was hailed by his fusion friends as a splendid coup d'etat.

His modus operandi is quite plain: the second section of the new act provides for a returning board of five persons, to be elected by the senate. As there was no senate in session, he would consider the offices of the returning board as vacant, and fill the vacancies by appointment; and thereby he would still win the day.

He never stopped one moment to reflect how irrational and unconstitutional it was to insist that the canvass and returns of an election held on the 4th of November should be compiled and its result promulgated by officers created by a law signed sixteen days after said election; especially when the law under which the election had been held ordered that the compilation should commence within ten days after the election, which had been done, as stated above; and finally, when the new law ordered also that the compilation should also commence within ten days after the election, which could not be done, since the election had been held on the 4th of November, and the new law had been promulgated only on the 22d of same month.

Moreover, the returning board of the law of 1870 had been vested in the right to the returns of the election of the 4th of November from the moment they had met as a returning board, and had been sworn in as such on the 13th of November, and said right which had been held in suspense during the judicial controversy between the two boards had been revested in the Herron board from the moment of the rendering of the judgment, on the 19th of November; most of the work of compilation had probably been already done when the new law was promulgated, and no new law could possibly divest the said returning board, nor undo the work already done under the old law.

Here terminate our remarks in reference to the point we had designed to demonstrate, to wit, that the legal returning board to compile and proclaim the results of the last election is the one composed of Warmoth, Lynch, Herron, Longstreet, and Hawkins; that it had been so decided on the 19th of November by the State judge, before whom the controversy between the two contending boards had been brought; that the attempt at giving to a law signed on the 20th of November the retrospective effect of regulating the proclamation of the result of an election held on the 4th of same month is irrational, unconstitutional, and revolutionary, and that the government of the State of Louisiana had been fully organized conformably to the returns published by the legal returning board, so declared by a State court, and we hope that the reader of these remarks will agree with us, that the point at issue has been proved beyond dispute.

We have, so far, very carefully avoided mentioning the suit instituted on the 16th November, before the United States court, Judge Durell presiding, because we wanted to show that outside of the said suit and judge the main question as to who were the members of the legal returning board, and, as a consequence, what were the legal returns of election had been decided by the supreme and State courts of Louisiana; our reason for so doing being to show at once how devoid of foundation and truth are the complaints of the parties who have represented that the whole election matter had been regulated solely by the orders of the United States judge. But we must, however, bless Providence that the

petition of the Hon. W. P. Kellogg, to the United States circuit court at New Orleans, should have borne, among other points, on the controversy between the two contending returning boards, praying also to enjoin the Wharton board from making any returns *pendente lite*, and that the opinions and orders of the United States judge should have coincided as fully and entirely with those of the State judge as they did; because the United States judge had what the State judge had not, viz, the power to enforce his orders against the revolutionary resistance of Warmoth to judicial orders; and it so happened that the very order issued by Judge Durell, to enforce the orders of his court, did also enforce the decrees of the Louisiana State court previously issued, and that by the timely occupation of the State-house by the United States troops before the 9th December Warmoth was prevented from organizing his legislature and officers, by force of arms in the hands of his Metropolitan police and militia, thus trampling down State constitution and laws, violating the orders of the State and United States courts, stifling the voice and will of the people, and re-enacting his revolutionary outrages of January last, which have necessitated the sending here of a congressional investigating committee; and thus by the precautionary and complete measures of the judge, the revolution, and, probably, bloodshed, contemplated by Warmoth, have been frustrated and prevented; the legislature and State officers elected by the people, and properly returned by the proper board, has been properly organized and inducted into office, and law, constitution, and order have finally prevailed.

The next point made by the committee is that the Hon. P. B. S. Pinchback is not senator since the 4th day of November last, and therefore had no right to organize the senate on the 9th of December, nor to act as governor during the suspension of Governor Warmoth by impeachment.

Granting that Pinchback was elected State senator for a term that has ended on the 4th of November last, we deny the balance of the proposition.

What are the facts? In the summer of 1871, Lieutenant-Governor O. J. Dunn died.

On the 24th of November following, Governor Warmoth issued a proclamation stating that, "Whereas a vacancy has occurred in the office of lieutenant-governor of the State of Louisiana by the lamentable death of the late Oscar J. Dunn, * * * I do hereby * * * convene the senate of the State of Louisiana to meet in extra session on the 6th of December next, * * * to fill the vacancy in the office of lieutenant-governor."—(Governor's message.)

On the 6th of December the senate met, 33 senators present. Senator Pinchback was elected temporary president of the senate.

Had the senate stopped there, the assertion of the committee would be correct; but then the senate proceeded to the election of a lieutenant-governor of the State, "to fill the vacancy occasioned by the death of the late Oscar J. Dunn," and Pinchback was so elected.—(Journal of the Senate.)

Lieutenant-Governor O. J. Dunn's term was not to expire until the 2d Monday of January, 1873; hence, as Pinchback was elected to fill the vacancy occasioned by the death of said Dunn, it follows that said Pinchback was elected lieutenant-governor for the unexpired balance of Dunn's term, which is up to the second Monday of January, 1873.

That Pinchback is lieutenant-governor of the State, appears from the daily journals of the senate; from all the laws of the State passed since

his election; from the fact that he acted as governor in the absence of Governor Warmoth when said Warmoth attended to the Cincinnati presidential convention; from the fact that he was recognized by Warmoth, Herron, and Lynch, and the chief justice of the supreme court, as a member of the returning-board, on November the 12th; and finally from the fact that Governor Warmoth called on him during the night of the 8th or 9th December and offered him a bribe of $50,000, if he, Pinchback, would on the next day organize the senate in a manner subservient to the wishes of said Warmoth.

The matter seems to be so clear that it does not require any more argument.

The other grievances complained of by the committee seem to have so many of the characteristics of family quarrels that had better be settled at home, that we will not waste time and paper in discussing them.

It will strike any careful reader of this rather long communication that had it not been for the stubborn, revolutionary, and dishonest attempts of Governor Warmoth and his confederates, the fusionists, to control at all hazards and against reason, law, constitution, and judicial orders the fair and honest expression of the will of the people, as expressed at the ballot-box, no political conflict would have taken place, and that the committee of one hundred would have been spared the inconvenience and hardship of a trip to Washington at this season of the year; and we believe we are showing ourself to be their friend in advising them to return home, and, abandoning all idea of revolutionizing the State, and changing the result of the last election, as legally proclaimed by the legal board of returning-officers provided for by law, to let Warmoth ponder on the enormous scrimes he has committed during his administration, and prepare himself for the penalties that are going to fall on his doomed head.

But if we have had to disagree with the committee of one hundred on many points, we are happy at last to agree with them in this, viz: "For the last four years there has not been good government in Louisiana; there has been extravagance, prodigality, dishonesty and waste in the public expenditures. The public debt has been marvelously increased, with but little benefit; the credit of the State has been given to speculating corporations for personal aims."

So it is, and among the greatest frauds and impositions perpetrated we will mention:

1st. The slaughter-house bill, (now, happily for the poor people of Louisiana, before the United States Supreme Court, who, it is hoped, will declare said act unconstitutional,) whereby the cost of fresh meat in New Orleans has been increased threefold, for the mere purpose of enriching a few individuals.

2d. The Mississippi and Gulf Canal and Drainage Company, by which the State has been swindled out of $650,000, and no canal built, and by which the city of New Orleans has been mulcted in the sum of about $1,000,000.

3d. The Louisiana Levee Company, by which the State of Louisiana (unless the law be repealed, which it is hoped will be done) shall have to pay at least $25,000,000 for an amount of work which, if performed at all, could be done for about $6,500,000 to $7,000,000. This act was passed after the constitutional limit of the State debt to $25,000,000 had been overreached by several millions.

4th. The levee bonds "sale," by which the levee commissioners falsely reported sold at 80 cents on the dollar $1,500,000 worth of levee bonds,

which had been misappropriated in so-called settlement of levee work, the payment of which had been prohibited by the legislature.

5th. The refunding scheme to some banks of New Orleans, by which it was attempted to bribe the legislature to pass an act to refund to several banks of New Orleans about $7,000,000 of confederate bonds and notes held by them.

6th. The funding commission of 1870, who paid confederate contracts executed during the late civil war.

The undersigned is sorry to say that there is not one of the above-mentioned operations in which some of the members of the committee of one hundred are not interested or implicated; hence it is quite natural to apprehend that their efforts in behalf of Warmoth and his—their—fusion party, are prompted in a very great measure by the fear that under the honest administration to be inaugurated by Governor Kellogg and his co-officers, the above-mentioned swindles will be thoroughly sifted, and the obnoxious and unconstitutional laws repealed; whereas should they succeed in revolutionizing the legitimate government of Louisiana and in inducting into office their own ticket, (one member whereof, James A. Graham, is an accomplice in one of the above-stated operations,) they would wield a sufficient influence to stifle and silence all inquiry, and retain on the statute-book all the. to the people, obnoxious, but to them very profitable, laws and monopolies created during the late administration, and under the auspices of H. C. Warmoth.

E. H. ANGAMAR,
Late Chief Engineer of State of Louisiana, Member of the Board of Visitors at United States Military Academy, West Point, &c.

ADDRESS OF CITIZENS OF LOUISIANA TO THE PEOPLE OF THE UNITED STATES.

The citizens of Louisiana have perceived with satisfaction that the people of the sister States are not unconcerned spectators of the events now transpiring within her limits, and of which it is probable no parallel can be found in the history of this or any other country. As these events were entirely brought about by the agency of officers, civil and military, of the General Government, the citizens of Louisiana, not doubting that the action of the Executive, at least, in reference to them, was the result of misapprehension of the facts, determined to adopt prompt measures for the correction of the error. At a meeting held for that purpose, representing (we may safely say) a large preponderance of the moral worth, intelligence, and wealth of the city of New Orleans, a committee of one hundred gentlemen was appointed, with instructions to proceed immediately to Washington to lay the facts before the several departments of the Government, and to solicit their aid in repairing the gross wrong which had been done, and in restoring to the people the right of self-government, which had been wrested from them by the most patent usurpation.

The undersigned form a part of that committee. On our arrival here we found so much misapprehension existing—even among those who are usually well-informed—in regard to the origin and history of this disturbance, that we determined to publish a brief narrative of the facts.

The parties engaged in these proceedings, aware that if the facts were properly understood they would admit of no defense, now seek to

belittle and conceal the question at issue, and to treat a conspiracy to overthrow the government of the State as a mere struggle for political ascendency between Governor Warmoth and Mr. Kellogg. They allege that the former was endeavoring by some trickery or legerdemain to cheat the latter out of his election, and that the object of their proceedings was simply to frustrate this attempt. They have sedulously sought to produce the impression upon the public mind that this committee was composed of mere allies and agents of Governor Warmoth. We repel this insinuation as utterly false and unwarranted. We are not the representatives of any personal or party interest whatever. Governor Warmoth was not a candidate for any office whatsoever at the recent election, nor have we, directly or indirectly, any connection or affiliation with him. So far as his past career is concerned, there are few if any members of this committee who have not been among his most pronounced opponents; while in those measures of his administration, for which he has been most loudly denounced, he had for his advisers, associates, and coadjutors, the very men who now assail him, including especially Pinchback, Antoine, Herron, and numerous others whose names figure most conspicuously in these proceedings. In reply to the other insinuations indicated above, we declare that we are no parties to, and have no knowledge of, any political trickery intended to defeat the true voice of the people; that we do not believe any such existed, and that we would not be here unless we could proclaim conscientiously our conviction that the men who have been foisted into the offices of the State have been not merely irregularly and unlawfully installed, but were not elected by the people, and were not and are not the choice of a majority of the voting population of Louisiana. We have not asked the Government to admit this on our simple assertion. All we have asked is that it should make a candid and impartial investigation of the facts.

With this preface, we now submit the following statement:

First. There was a general election held in Louisiana on the 4th day of November last for the election of a governor, lieutenant-governor, members of the general assembly, and other State and Federal officers. At this election William Pitt Kellogg, a member of the Senate of the United States, and C. C. Antoine, collector of the port of Shreveport, were candidates for the offices of governor and lieutenant-governor, and were opposed by John McEnery and Davidson B. Penn. The present governor, Warmoth, was not a candidate for re-election.

Second. This election was conducted without riot, disturbance, or violence, and the number of votes cast was unusually large.* The returns of the election were made to the board appointed for the purpose. This board was composed, under the law, of the governor, (Warmoth,) the lieutenant-governor, the secretary of state, and two other persons named in the law, viz. John Lynch and Thomas C. Anderson. The office of secretary of state was filled at the time by Mr. F. J. Herron, who had been appointed by Governor Warmoth to fill the vacancy caused by the removal, several months before, of George E. Bovee, the legality of which removal and appointment was then in contest before the State courts. The board met, and it was resolved that Anderson and Pinchback were disqualified by reason of their being candidates for office. Warmoth then removed Herron (whom he had appointed) from the office of secretary of state as a defaulter, and appointed and commissioned Wharton in his stead.

We have no reason to believe that the action of Governor Warmoth

*See Appendix A and B.

in the removal of Herron was based upon a desire to commit a fraud, for under the returns there was no necessity for fraud. It was prompted by his discovery of a plot between Herron and Lynch to falsify the returns and defeat the will of the people. This is manifest from the fact, developed in the evidence before the court, that Herron, anticipating the thwarting of his scheme, had several days before ordered a duplicate of the seal of State to be engraved, by which means he hoped to preserve the insignia of office in the event of his removal by the governor.

Omitting further details, Warmoth and Wharton, on the one hand, assuming to be a majority of the board, and in the presence of Lynch, proceeded to elect Hatch and DaPonte to fill the vacancies caused by the withdrawal of Pinchback and Anderson,* while Lynch and Herron afterward assembled and, under the same assumption, elected Longstreet and Hawkins. Thus there came to be two bodies—each claiming to be the returning board—one presided over by Governor Warmoth, the highest executive officer of the State, and, under the law, the presiding officer of the board, and which had possession of all the election returns and everything necessary to ascertain the result; while the other consisted of Lynch, the removed secretary of state, Herron, and their two appointees. Afterward the State supreme court decided that the removal of Bovee and the original appointment of Herron were illegal, and Bovee was re-instated in his office. Whatever may be said of these contesting boards, it is clear that the courts of the United States had no semblance of authority to decide between their conflicting claims to office.

Third. After it had become probable that the two candidates, William Pitt Kellogg and C. C. Antoine, had been defeated, and that their opponents would be declared elected, they respectively filed bills in the circuit court of the United States for the district of Louisiana for injunction and relief. The governor of the State, the members of the canvassing board, other citizens of the State connected with the promulgation of the returns, and certain persons elected or claiming to have been elected to the legislature and to the governorship, were made defendants in one or other of these suits. The cause of complaint was, that they severally apprehended that they would be deprived of the offices for which they had been candidates. They claimed to have had the majority of votes at the election, and that there had been 10,000 voters prevented from voting because of their complexion and previous state of servitude, whose votes they would have received. The bill of Kellogg professed to be for the preservation and perpetuation of the evidence of the election, and to have reference to the support of a suit he might have to bring to recover the office. Antoine's suit was similar in the claims of title, and had reference in its prayers for relief to the organization of the general assembly at the meeting called, in the proclamation of the governor, for the 9th day of December, 1872.

Fourth. The parties to these suits were all citizens of the State of Louisiana. The object of the suits was to assert title to offices of the State in advance of any decision or announcement by any board of any person as elected, and to determine the persons to make the decision and the announcement, by the judicial authority of the circuit court of the United States. Pending the suits,† an *ex parte* and private order

*See Appendix C.

†The decision of the court upon the question of jurisdiction was not rendered until 11½ o'clock on the morning of the 6th of December, whereas the order of Judge Durell, directing the marshal to take possession of the State-house, was issued at a late hour of the night before, under the most peculiar circumstances, and executed before the dawn of day.

was made in the suit of Kellogg, declaring that the defendant, H. C. Warmoth, the governor, had, in violation of the restraining order of the court, issued a proclamation and published the returns of certain persons claiming to be the board of returning officers, and proceeding as follows:

> Now, therefore, to prevent the further obstruction of the proceedings in this cause, and further to prevent the violation of the orders of this court, and the imminent danger of disturbing the public peace, it is hereby ordered that the marshal of the United States for the district of Louisiana shall forthwith take possession of the building known as the Mechanics' Institute, and occupied as a State-house for the assembling of the legislature therein, in the city of New Orleans, and hold the same subject to the further order of this court, and meanwhile to prevent all unlawful assemblage therein under the guise or pretext of authority claimed by virtue of pretended canvass and returns made by said returning officers in contempt and violation of said restraining order; but the marshal is directed to allow the ingress and egress to and from the public offices in said building of persons entitled to the same.

Fifth. The interlocutory and *ex-parte* order in the suit of Antoine, the candidate for lieutenant-governor, seems to have been made as the complement to the order above quoted in the suit of Kellogg, which directed the occupation of the State capitol by the marshal, with directions to prohibit what is termed in the order "an unlawful assemblage," while the same marshal is directed to allow the ingress and egress of persons whom he might determine to be entitled to such a privilege. This order, in the case of Antoine, is comprehensive and explicit. None can mistake its import or its object. It provided:

First. That the governor of the State be enjoined and restrained from examining the election returns or counting votes, except in the presence of officers designated in these orders, and from controlling, interfering with, or attempting to interfere with, the organization of the State legislature, and from doing any act, or from giving any order or direction, or making any request which may directly or indirectly prevent or hinder any person from being present and taking part in the organization of the senate on the 9th of December, or at any future day, who may be returned as a member thereof by a board composed of H. C. Warmoth, George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose name has been transmitted to Charles Merritt, secretary of the senate, by George E. Bovee, secretary of state.

Second. That twenty named persons, who had been candidates for the office of senator in the State senate, and who were supposed to have been elected, and had been declared to be so, be enjoined and restrained from participating in any manner in the organization of the senate, or doing any act about that organization, unless their names should appear on Bovee's list of names of members of the senate, as transmitted to the secretary of the senate, Charles Merritt.

Third. About one hundred persons, whose names are given and who were supposed to have been elected to the house of representatives of the general assembly, and had been declared to be so elected, were similarly enjoined from participating in the organization of the house of representatives, or from doing any act or casting any vote, unless their names were on Bovee's list of members.

Fourth. The clerks of the senate and of the house of representatives were severally enjoined from placing on any list, or announcing, or recognizing, or designating as a member, prior to or during the organization of the respective houses, any person whose name was not placed upon Bovee's list.

Fifth. The secretary of state (Bovee) was enjoined from receiving any returns of the election of State officers, or of members of the general

assembly, excepting such as should be filed in his office by the board composed of Warmoth, Longstreet, Hawkins, Lynch, and Bovee.

Sixth. The chief of the metropolitan police, and all of its members, numbering about three hundred, and the board, were enjoined from interfering with the organization of the general assembly, and from preventing the persons on Bovee's list from entering into the halls of the assembly.

Seventh. The persons composing the board recognized by the governor were enjoined from acting as a canvassing board, and from declaring and publishing any calculation, statement, or proclamation of the results, or granting certificates of election, or statements tending to show any right to office growing out of ballots cast at said election.

The marshal, assisted by a detachment from the Army of the United States, under these orders took possession of the State capitol, and held it on the 9th of December, when the general assembly was to convene under the proclamation of the governor. The egress and ingress of persons were regulated according to this order. A person named Pinchback took possession of the chair of the senate, and directed its organization. He had been a senator for a term that had expired. While a senator he had been president of the senate, and in virtue of such presidency, under the law, had acted as lieutenant-governor after the death of Dunn, the lieutenant-governor chosen in 1868; but at the time of these occurrences he was not merely *functus officio* as president of the senate, but was no longer a senator, and had no title or color of title to act as lieutenant-governor, or to take any part in the organization of the Senate.* The house of representatives was also organized, the United States postmaster at New Orleans being its speaker. The certificates of Bovee under the injunction were taken as conclusive evidence of membership. The house passed resolutions for the impeachment of the governor, and thus Pinchback felt at liberty to assume the title of governor. Two district courts were abolished, and a new court, called the superior court,† was established, with extraordinary powers, and, among others, exclusive jurisdiction to determine title to office, and Mr. Hawkins, one of the members of the Bovee board, which had made the election returns, was made judge. Steps having been taken by the governor, in his official capacity, to secure a revision, by the Supreme Court of the United States, of the chancery orders of the United States circuit court, these bodies forthwith adopted resolutions to dismiss these proceedings.‡ The militia was placed under the command of General James Longstreet, another member of the Bovee board, and the arsenals were taken possession of by the aid of United States troops.

It has been supposed that no amount of professional energy and skill was adequate to make a *coup de main* in a chancery cause. This statement shows that a civil revolution was commenced, carried on, and accomplished within a lunar month, under the orders of a chancery court, in suits over which the court had no jurisdiction at all, whether of parties or subject-matter.§ The circuit court of the United States is a court of limited jurisdiction, and without authority to entertain civil suits between citizens of the same State, unless the case arises directly under the Constitution and laws of the United States and jurisdiction is vested by act of Congress. Congress has no power to confer jurisdiction in any other case between such citizens. It has no authority to give jurisdiction of a suit of a citizen of the State against the State. Under the act of Congress of May 31, 1870, upon a single condition of

* See Appendix D. † See Appendix E. ‡ See Appendix F. § See Appendix G.

facts, a citizen of a State may maintain a suit for an office of a State in the courts of the United States, but the State legislature is specially excepted from the operation of this act in the same clause that excepts the office of members of Congress and presidential electors.* The *ex-parte* preliminary order in the case of Antoine is as explicit a determination of the title of the members of the legislature, and furnishes as complete a writ of possession, as could be devised. The organization of the legislature is effected by a simple chancery order.

Had there been resistance to the execution of these orders, and had riot and bloodshed followed, upon whom would have fallen the responsibility? By whose forbearance was it that a bloody catastrophe has not been exhibited as a scandal to the land? It sometimes happens that the executive department is tolerated, excused, or justified in acts of administration which exceed its legal powers. The arguments derived from the terms "State necessity," "public welfare," or "convenience," have here a soothing influence; but judiciary action is not entitled to any benefit from such arguments. The damage which ensues from the employment of judiciary power to accomplish other than judicial acts of administration cannot be calculated, and it is impossible to justify a court in determining that to be legal which is merely desirable, or that to be right which is only profitable. The order in the Kellogg case was *ex parte*. It was placed in the hands of the marshal without notice to the parties. It proceeds for an alleged contempt by no legal procedure usual in matters of the sort, and we are not aware of any imminence of danger to the public peace which did or could justify the seizure of the State capitol in a chancery suit between Kellogg and a canvassing board, a suit professedly brought to perpetuate testimony.

The case of Antoine displays with even more distinctness than that of Kellogg the use that has been made of judicial orders to accomplish results of which the judiciary had no cognizance. Antoine was a candidate for lieutenant-governor, and would have been entitled to his office in January next had he been elected. With a disputed title, a month in advance, he filed this bill and obtained the order we have cited, placing under interdict the governor, the secretary of state, the members elect of both branches of the general assembly, the board and all the officers and men of the police, and the members of two canvassing boards; and upon this *ex-parte* order the organization of the general assembly, at a time when he (Antoine) had no share in any of its sittings, was regulated and effected.

Since the meeting in New Orleans under which the committee was appointed, we have been met with the suggestion that these orders and acts are facts accomplished, and that their revocation or rescission would not restore the *status quo*, and that our complaints, therefore, are unreasonable. If the opinion we have be correct, such a circumstance ought not to affect our action or conduct. When the King of Great Britain established arbitrarily a government in one of the colonies, the remaining colonies took the alarm, lest it might serve as a precedent as well as an instrument to establish such governments elsewhere. Besides, men are less patient under wrongful orders and acts of a judiciary tribunal than even of violence from other sources of authority. A government which rests for its organization upon an illegal judicial order, executed by a marshal with companies of soldiers, does not command as much respect or authority as if the judicial appendages had been dis-

*See Appendix H.

pensed with, and the Army had set up the government with a strong and usurping hand.

The committee take the liberty to say that they have had no connection with these suits as parties or attorneys: neither do they claim any of the offices in dispute. They have not heretofore been concerned in the controversies among the political classes which have endangered the peace of, and brought scandal upon, the State. They affirm that, during the last four years, there has not been good government in Louisiana. There have been extravagance, prodigality, dishonesty, and waste in the public expenditures. The public debt has been enormously increased, with but little corresponding benefit. The credit of the State has been given to speculating corporations, for personal aims. The taxes on property have assumed such proportions that they might appropriately be called rents paid by the proprietors to the State for its occupation and use. The taxes upon business oppress the commercial and laboring classes. The laws to control elections, corporations, and public institutions stimulate these excesses of office-holders, and the consequence is universal depression and discontent. The State needs an honest, faithful, and responsible government, conducted to attain public objects, and not to enrich its members or to perpetuate their power. There was an earnest effort to obtain such a government at the last election, but a political conspiracy has unfortunately defeated it.

We affirm, without fear of contradiction, that the foregoing statement exhibits on the part of the United States court the most high-handed usurpation of jurisdiction and authority of which the annals of jurisprudence afford any example.* The action of the returning-board, recognized and vested with all its powers by this court, has been equally unprecedented. Without any official returns before them, without any of the official data on which alone their action could have been rightfully based, they have presumed to proclaim the results of the election. The declaration by them of the votes cast in the different parishes is as purely fanciful as if no election whatever had been held.

They have arbitrarily reduced and increased the votes on one side or the other in different parishes to suit their purposes. In several parishes, while retaining or even adding to the votes cast for their candidates, they have simply annihilated or stricken out entirely the votes cast for their opponents. In other parishes they have exactly reversed the returns, giving to their candidates the majority which had really been returned for their opponents.† They have not pretended to furnish the public with any explanation of the basis on which they proceeded, or the theory on which they acted. Their whole conduct is without any kind of reasonable explanation.

We submit to the people of the United States that such proceedings reach a point at which the whole theory of popular government is reversed and overthrown. The means by which such results have been reached are enough to startle the public mind, but the results themselves are not less appalling. Aside from the general offices of the State, we find the legislature of the State delivered over into the hands of men who were not elected, and who are utterly unfit for positions of such responsibility. As originally composed at its organization, it comprised sixty-eight persons of color, most of them totally uneducated, with a very small minority of whites. Since that time they have expelled members whose seats were uncontested. They have unseated conservative members returned elected by their own board, and seated

*See Appendix I. †See Appendix J.

their defeated opponents, on the simple ground that the former had not appeared to claim their seats.* The result is that, originally bad as the legislature was, it makes itself worse day by day, and the prospect is that soon the conservative element of the State will have no representation whatever. To those who flattered themselves with the hope that Mr. Kellogg would not willingly abet any scheme of outrageous misgovernment, it is now apparent that, even supposing this to be true, the power of restraint has passed entirely beyond his control, and that, should he attempt to thwart the schemes of this legislature, his own impeachment would be a probable event of the future.

In conclusion, we would state that we have attempted to perform the duties of our mission in the purest non-partisan spirit, and that we have not sought to furnish capital to any political party or to excite popular clamor in the interests of any faction. We have laid our case before the President and his Attorney-General, and we willingly testify that we have been courteously received and patiently listened to. While they have refused the specific measures of relief for which we applied, they have given reasons for such refusal in no manner implying any indisposition to see justice done.

They have referred us to Congress, and we feel assured that we shall have the immediate sanction of the President so far as we invite an impartial investigation of the facts of our case, and that we shall have his co-operation in any measures of relief which Congress may adopt after such investigation. The people of Louisiana, ignoring party, are conscious of having made an honorable effort to place in office men of tried probity. They seek justice, not generosity. They ask for a calm, impartial examination into the recent extraordinary occurrences within their borders, in order that the truth may be known, and that there may be a speedy correction of the dangerous evils now threatening the very life of their State.

WASHINGTON, D. C., *December* 23, 1872.

J. A. CAMPBELL.	JOHN FAIRBANKS.
J. ALDIGÉ.	C. E. FENNER.
AUGUST BOHN.	E. B. WHEELOCK.
JOSEPH BOWLING.	A. B. GRISWOLD.
N. BARNETT.	G. KOHN.
A. CHIAPELLA.	H. MCCLOSKEY.
J. S. COPES.	G. W. NOTT.
H. W. CONNER.	H. V. OGDEN.
H. D. COLEMAN.	W. S. PIKE.
JOHN C. POTTS.	F. A. HABER.
JOHN F. POLLOCK.	H. GARDES.
J. TUYÈS.	P. M. BAKER.
JAMES WALLACE.	ALBERT C. JANIN.
WALKER FEARN.	S. HERNSHEIM.
D. C. LABATT.	T. H. KENNEDY.
H. O. SEIXAS.	J. M. SCOTT.
J. W. LABOUISSE.	AL. MILTENBERGER.
D. WEST.	H. G. DARCY.
RICHARD TAYLOR.	SELLA MARTIN.
MAYER STERN.	W. MARKS.
R. PUGH.	C. M. WILCOX.
GEORGE W. SQUIRES.	H. R. CRAMER.

* See Appendix K.

APPENDIX.

A.

The New Orleans Republican, (the organ of the radical republican party,) of the 19th of November, in an editorial article, admitted frankly and unequivocally that the election held on the 4th of that month was the fairest and most peaceable ever known in the State of Louisiana; that no negro had been deprived of his right to vote because of his color; that there had been every disposition to allow to him the unmolested enjoyment of his rights; and that complete conciliation existed between the two races.

B.

The total vote in November last for governor, exclusive of the three parishes of Saint James, Terebonne, and Saint Tammany, from which irregular and informal returns only were received, amounted to 128,402. The total vote of the State in 1870 was only 106,542.

C.

[Extract from New Orleans evening papers of November 13.]

When the board met to-day, Governor Warmoth, Acting Secretary of State Herron, and Senator John Lynch being present, the governor, after the reading of the minutes, presented the certificate of Auditor Graham, to the effect that, Secretary of State Herron being a defaulter, he had been compelled by the constitution and laws to suspend him from the exercise of his functions, on charges which would be enumerated to the senate. Accordingly Secretary of State Herron was requested to withdraw from the board, which he did. The governor next presented the commission, and the evidence of his qualification for the office, of Colonel J. Wharton, as the successor of General Herron. Colonel Wharton was in the ante-room, and on being sent for promptly appeared and took his seat in the board.

Governor Warmoth then proposed the name of F. H. Hatch as a substitute for Lieutenant-Governor Pinchback, which was adopted by the votes of Governor Warmoth and Secretary of State Wharton, Senator Lynch voting "No." It was further moved that Durant Daponte be elected in place of Senator Thomas Anderson. These nominations were adopted by the board, whereupon Senator Lynch retired. The board, being thus completed according to law, will proceed to its duties.

D.

On Monday, November 9, at the Mechanics' Institute, at the organization of the senate, pursuant to the governor's proclamation, it was desired by a majority of the holding-over senators, and which majority were nearly all republicans, that the names of those holding over, and of those returned by both boards, should first be called. These senators, according to all law and precedent, would then determine who were entitled to seats in all cases of doubt, or where no returns had been made by the custom-house board. But this did not suit the purposes of the custom-house party. Mr. Pinchback, who had called the senate to order, refused to recognize any motion whatsoever, and ordered the calling of the roll according to the list prepared at the custom-house. General McMillen, a staunch republican, sprang to his feet, and objected to the arbitrary ruling and usurpation of Mr. Pinchback. The latter refused to hear him or to receive his protest. Other republicans, General H. J. Campbell among the number, denounced Mr. Pinchback's action, and protested against his presiding over the senate. Their efforts were useless. United States marshals and United States soldiers

were on every hand, and their instructions from E. H. Durell, judge of the United States district court, were to obey the behests of Mr. Pinchback.

And this is the reason why objections were made to Mr. Pinchback's further presiding over the senate. He was elected, in 1868, senator from the second district of New Orleans for a term of four years, which expired at the last election, when Ex-Lieutenant-Governor A. Voorhies was elected to succeed him. At the death of Lieutenant-Governor Dunn, Senator Pinchback was elected president of the senate, and thereby became lieutenant-governor *ex officio*. At the regular session of 1872, Mr. Pinchback *always claimed the right to vote as senator, and did so vote*, as the journal will show.

When Ex-Governor M. Hahn resigned his office, and J. Madison Wells, lieutenant-governor, became governor in his stead, Senator Louis Gastinel was chosen president of the senate, and thereby became *ex officio* lieutenant-governor. All acts thereafter passed during that term are signed "Louis Gastinel, *ex officio* lieutenant-governor and president of the senate." That was according to the law of 1865, which says that, when a vacancy shall occur in the office of lieutenant-governor, "the senate shall elect a president, who shall be lieutenant-governor." This law has been copied verbatim in Ray's revised statutes, 1870. At the ensuing election Governor Wells was a candidate for re election, and Judge A. Voorhies for lieutenant-governor. Immediately after the election Governor Wells called a special session of the legislature, to assemble at Mechanics' Institute, November 25, 1865. The senate having been called to order by the president, Mr. Gastinel, Mr. Kenner objected to his presiding any further, as his term of office had expired, and his successor was present. Thereupon Mr. Victor Barthe, of Jefferson, was placed in the chair as president. On the 2d of December the votes for governor and lieutenant-governor were counted, and on the 4th Mr. Albert Voorhies was installed as lieutenant-governor, thereby becoming president of the senate.

There is a precedent: the case is precisely in point; the facts agree in every respect. The senate is the sole judge of the qualifications of its members, and it has given a construction to a law which has been re-enacted since that construction of it. Judge Durell is without authority, even under the enforcement law, to create a legislature, or in any way control its organization. It is deemed proper that these facts and this precedent be spread abroad through every State, and the National Government be fully apprized that the man who has been recognized as "acting governor of Louisiana" is absolutely without right to hold such office.

E.

AN ACT to establish an additional district court for the parish of Orleans; to define and limit the jurisdiction, and to determine the powers thereof; to provide for the transfer of certain cases now depending before certain other district courts for said parish to the court hereby created; to authorize the governor to appoint a judge and a clerk for said court, and to provide a court room for said court; to abolish the seventh and eighth district courts for the parish of Orleans, and to provide for the transfer of the records and suits in said seventh and eighth district courts to other courts in said parish.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That there shall be, and is hereby, established an additional district court for the parish of Orleans, which shall be known and designated as the superior district court for the parish of Orleans.

SEC. 2. *Be it further enacted, &c.*, That the superior district court hereby created shall have *exclusive* jurisdiction in and for the parish of Orleans, to issue writs of injunctions, mandamuses, quo warranto, and to entertain all proceedings, and to try all cases or actions in which the right to any office, State, parish, or municipal, is in any way involved. * * * * *

SEC. 6. *Be it further enacted, &c.*, That the offices of judge and clerk of the superior district court for the parish of Orleans, hereby established and organized, shall be deemed to be vacant as in case of original vacancy. The governor shall at once fill such vacancies by appointment. * * * * *

SEC. 7. *Be it further enacted, &c.*, That the act of the general assembly, approved March 16, 1870, entitled "An act to establish an additional district court for the parish of Orleans, to define the jurisdiction thereof, and to re-organize and determine the jurisdiction of the existing seven district courts for the parish of Orleans," be, and the same is hereby, repealed, in so far as it establishes and organizes the eighth district court for the parish of Orleans; it being the intent and purpose of this act to abolish the said eighth district court for the parish of Orleans, and the said eighth district court for the parish of Orleans be, and is hereby, abolished. * *

SEC. 8. *Be it further enacted, &c.*, That the seventh district court for the parish of Orleans be, and is hereby, abolished. * * * *

SEC. 9. *Be it further enacted, &c.*, That all laws or parts of laws in conflict with this

act be, and the same are hereby, repealed, so far as they are in conflict, and this act shall have force and effect from and after its passage.

CHARLES W. LOWELL,
Speaker of the House of Representatives.
A. B. HARRIS,
President of the Senate and Acting Lieutenant-Governor.

Approved December 11, 1872.

P. B. S. PINCHBACK,
Lieutenant-Governor and Acting Governor of Louisiana.

A true copy:

GEO. E. BOVEE,
Secretary of State.

F.

AN ACT relative to the office of attorney-general, and directing the discontinuance of certain proceedings before the Supreme Court of the United States.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened:* Whereas the Hon. A. P. Field has been duly promulgated as having been elected to the office of attorney-general of this State; * * * * and whereas other perons are claiming to represent the State of Louisiana in judicial proceedings: That the said A. P. Field, and his legal successors, and those acting under him or them, be alone authorized to institute or continue in the name of the State of Louisiana any suit or judicial proceeding, and all other persons are prohibited from doing the same.

* * * * * * * * * * * *

SEC. 2. *Be it further enacted, &c.*, That the said A. P. Field is authorized and instructed to discontinue any and all proceedings instituted in the Supreme Court of the United States by H. N. Ogden or any other person in the name of the said State.

SEC. 3. *Be it further enacted &c.*, That this act shall take effect from and after its passage.

CHARLES W. LOWELL,
Speaker of the House of Representatives.
A. B. HARRIS,
President of the Senate, Acting Lieutenant-Governor.

Approved December 10, 1872.

P. B. S. PINCHBACK,
Lieutenant-Governor, Acting Governor of the State of Louisiana.

A true copy:

GEORGE E. BOVEE,
Secretary of State.

G.

Constitution of the State of Louisiana.

ART. 52. No member of Congress or any person holding office under the United States Government shall be eligible to the office of governor or lieutenant-governor.

Constitution of the State of California.

ART. 4, SEC. 21. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State.

CASE.

Searcy vs. *Grow*, (15 California Reports, 117.)

The court, consisting of Chief Justice Stephen J. Field, and Associate Justices Baldwin and Cope, say:

"The counsel for the appellant contends that the true meaning of the constitution is, that the person holding the Federal office described in the twenty-first section is forbidden to take a civil State office while so holding the other; but that he is capable of receiving votes cast for him, so as to give him a right to take the State office upon

or after resigning the Federal office. But we think the plain meaning of the words quoted is the opposite of this construction. The language is not that a Federal officer shall not *hold* a State office while he is such Federal officer, but that he shall not, while in such Federal office, be *eligible* to the State office. We understand the word 'eligible' to mean capable of being chosen—the subject of selection or choice. The people in this case were clothed with this power of choice; their selection of the candidate gave him all the claim to the office which he has; his title to the office comes from *their* designation of him as sheriff. But they could not designate or choose a man not eligible, *i. e.*, not capable of being selected. They might select any man they chose, subject only to this exception, that the man they selected was capable of taking what they had the power to give. We do not see how the fact that he became capable of taking the office after they had exhausted their power can avail the appellant. If he was not eligible at the time the votes were cast for him, the election failed. We do not see how it can be argued that by the act of the candidate the votes which, when cast, were ineffectual, because not given for a qualified candidate, became effectual to elect him to office. Can it be contended, that if Grow had not been a citizen of the county or of the State at the time of the election, or had been an alien at that time, that the bare fact that he did so become a citizen at the time he qualified would entitle him to the office? Or suppose a man, when elected, under sentence and conviction for crime—if such a case can be supposed—would a pardon before qualification give him a right to hold the office? When the words of the constitution are plain, we cannot go into curious speculation of the policy they meant to declare. It may, however, have been a part of the policy of the provision quoted to prevent the employment of Federal patronage in a State election."

H.

Act of May 31, 1870.

SEC. 23. *And be it further enacted*, That whenever any person shall be defeated or deprived of his election to any office, *except elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature*, by reason of the denial to any citizen or citizens who shall offer to vote of the right to vote on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office; and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote on account of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof, so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment to the Constitution of the United States, and secured by this act. (Stat. at Large, vol. xvi, p. 146.)

I.

By the decree, or, rather, the interlocutory order of a United States district judge, it is attempted, in spite of the overwhelming expression of the will of the people of the State, to establish over the State of Louisiana a government consisting of a United States Senator for governor, the collector of a port as the lieutenant-governor, the United States treasurer for State auditor, a surveyor of the port for president of the senate, the postmaster of New Orleans for speaker of the house, a deputy collector for chairman of the finance committee of the legislature, and a legislature composed principally of defeated candidates, most of whom are in the employ and pay of the Federal Government.

J.

Extract from the message of the governor, of December 11, 1872.

It is scarcely necessary to state what is so well known to all of you, that the election recently held was fairly and honestly conducted under the laws of the State, and that the registration and the vote were both unusually full, the latter being the largest ever cast in Louisiana.

The total vote for governor, exclusive of the three parishes of Saint James, Terrebonne, and Saint Tammany, from which irregular and informal returns were received, amounted to 128,402, an increase of 21,860 on the vote of 1870. The republican vote, estimating and adding the three omitted parishes at the same vote cast in 1870, (3,734,) is only 2,461 below the vote cast for the republican State ticket at the last election, and it is well known that thousands of republican voters throughout the State, at this election, supported the fusion ticket. The returns made by the State officers were in due form, and these returns are the only official evidence in existence of the vote at the late election. The pretense of the agents selected by Senator Kellogg to promulgate an official falsification of the result, that they have made a compilation of the votes, is only one of the bold and audacious falsehoods by which every step of the conspirators has been marked. Those persons had no returns, no documents, no evidence of any kind in their possession, except the statements made up by themselves and their allies for the consummation of their fraudulent purposes. A comparison of the tabulated statement published by them with the genuine returns, as previously published, shows that they did their work in flagrant defiance of decency, and without even an attempt to conceal their fraud and falsehood from the eyes of the public. The bill filed by Senator Kellogg alleged simply a deficiency in his returned vote of about 10,000, due to an alleged suppression of a portion of votes actually cast, and a refusal to register or to receive another portion. The alleged suppression was totally false, and was supported by no evidence whatever—not even the simulated cross-mark affidavits with which the conspirators so liberally provided themselves in advance. The affidavits filed by them amounted to about 4,000 in number, according to their own statement. If they had simply added this number to the total, it would have given Senator Kellogg 64,233 votes against 68,169 for McEnery, not enough to show an apparent election, even including the vote for the three omitted parishes. They therefore, without returns, without testimony of any kind, without even adopting and following any rational theory of computation, added the enormous number of 12,675 to Senator Kellogg's vote, and, as if to still further insult the intelligence of the public, and still more flagrantly expose their own falsehood and wickedness, they deliberately struck off 14,140 from the vote cast for Mr. McEnery. The returns from the parish of Bossier were, for McEnery 953, for Kellogg 555. They report for Kellogg 1,159, for McEnery none The vote at Natchitoches was for McEnery 1,250, for Kellogg 550. They report for Kellogg 1,205, for McEnery none. In Assumption they have added 504 to Kellogg's vote, and subtracted 454 from McEnery. In Avoyelles they add 525 to Kellogg's vote, and subtract 454 from McEnery's. In East Baton Rouge they add 1,343 to Kellogg's vote, and subtract 727 from McEnery's. In De Soto they add 578 to Kellogg's vote, and subtract 660 from McEnery's; in Plaquemine they add 1,129 to Kellogg's vote; in Saint Landry they add 545 to Kellogg's vote, and subtract 555 from McEnery's; in Vernon, where McEnery has 659 votes, they allow him 112; in Winn, where McEnery has 575 votes, they allow him 127; in Washington, where McEnery has 453 votes, they allow him 194; in Saint Mary they add 300 to Kellogg's vote, and subtract 500 from McEnery's; in Union, where McEnery has 1,418 votes, they allow him 460; in Orleans they strike between 3,000 and 4,000 from McEnery's vote; and in almost every parish they have made changes equally capricious and irrational, and returns equally false and fraudulent; and these are the men who based their suit at law upon the charge that the governor and the returning-officers intended to falsify, to mutilate, and to destroy the election returns. These returns are in existence; they retain all the integrity of their original form. They are unmutilated and unfalsified; they constitute the only evidence of the late election that any law recognizes, or that any honest judicial tribunal would accept. They have never been in the hands of the conspirators, and yet these persons, pretending to act as public officials, have promulgated results so monstrously at variance with the truth, that they seem to court the notoriety of falsehood and to revel in the publicity of fraud.

K.

Extract from a report of the proceedings of the legislature.

HOUSE.—The house met at 12 m. Seventy members present. Mr. Sauer in the chair.

Mr. Demas introduced the following resolution, which was adopted:

"Whereas the committee on elections and qualifications of this house have, after due investigation, reported favorably upon the applications of W. H. Decker and Radford R. Davis, representatives from the tenth representative district, parish of Orleans;

"Whereas the said W. H. Decker and Radford R. Davis are the only applicants for seats as representatives elect to this house;

"And whereas the people of the tenth and eleventh wards of the parish of Orleans, comprising the said tenth representative district, are now without representation or voice in the legislature of this State:

"*Resolved*, That in consonance with the report of the committee on elections of this house, and in view of the fact that the said Decker and Davis are the only applicants for seats in this body, that the said Decker and Davis be, and they are hereby, admitted to seats in this house, subject to any contest which may be hereafter made."

The members elect denied seats by this resolution are Messrs. James McConnell and James B. Eustis, who were elected by overwhelming majorities, and whose election was admitted by the custom-house board, but who absented themselves from the legislature because of the illegality of its proceedings.

The same action was taken by the senate in reference to Messrs. McMillen and Campbell.

How the right to seats in the legislature is determined.

The following resolution, offered by Mr. Bryant, of East Baton Rouge, was also adopted:

"Whereas the legal returning-board, composed of Messrs. Lynch, Longstreet, Bovee, and Hawkins, have carefully examined, counted, and officially promulgated the election returns of members of the house of representatives, elected at a general election held on the 4th day of November, 1872: Therefore, be it

"*Resolved*, That the members so returned are hereby confirmed as the legal members of the house of representatives of the State of Louisiana."

To the people of the North.

NEW ORLEANS, *December* 13, 1872.

The undersigned, representatives of houses in the North doing business with the South, who have been visiting New Orleans for many years past and at present, and are thoroughly conversant with the political feelings of the people of this section, wish to express our opinion at this critical juncture of affairs.

Visiting New Orleans at a season when the city is usually full of activity and life, we find every channel of trade paralyzed, the State-house occupied by troops, the officers of the State threatened and intimidated, and the people cast into the deepest gloom by the arbitrary usurpation of power and place by political adventurers, backed by a United States judge, who has called in the assistance of United States troops to execute his decrees.

After an election, which we believe to have been conducted as fairly and honestly as any in which the American people ever participated, finding themselves beaten by a large majority of the votes of the citizens of this city and State, this unscrupulous and irresponsible body of men have resorted to trickery and violence to defeat the execution of the will of the people as thus expressed.

Believing this action the greatest outrage ever attempted to be carried out in our country, and one which tends directly to the overthrow of the liberties of the people, and to destroying the power and sacredness of the ballot-box, we hereby enter our solemn protest against the high-handed action, and appeal to our fellow-citizens of the North to unite in protesting to Congress and the President, to the end that the legally-elected officers of the State may be installed in office, and the people of the community supported in their efforts to exercise the right of franchise, that they may redeem their State from the bankruptcy and ruin with which it is now threatened through the action of these nameless adventurers.

CHARLES A. GRIFFITH,
Representing A. D. Hopping & Wilson, 218 and 220 Washington street, New York.
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John G. McMurray & Co., 227 Pearl street, New York.
GEORGE LIPSHER,
W. W. Eastham, 129 Broad street, Boston.
THOMAS S. DARLING,
Detroit Watch Works, Detroit, Michigan.
E. P. BRIGGS,
H. & J. W. King, 80 Chambers street, New York.
WILLIAM C. ILSLEY,
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JOHN W. POOLE,
Wm. R. Warner & Co., 164 North Third street, Philadelphia.
J. H. HARGOOD,
New York Brush Company, 254 Pearl street, New York.

AMOS PATTEN,
W. K. Lewis & Bros., 93 Broad street, Boston.
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A. FLESH,
A. D. Flesh & Co., Frankfort, Germany, and 351 *Broadway, New York.*
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John Duer & Son, 24 *South Charles street, Baltimore.*
WILLIAM C. MUDGE,
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Linseed Oil Company, 235 *Pearl street, New York.*
D. HIRSCH, *of Hirsch & Co.,* 174 *Water street, New York.*
JOE HARRISON,
Royal Chemical Company, 191 *Duane street, New York.*
J. T. BURDEAU,
Agent Mississippi Valley Transportation Company, Saint Louis, Missouri.
R. E. PARKER,
Agent McKesson & Robbins, 91 *Fulton street, New York.*
T. SIMMONS,
Agent Joseph Schroder & Co., Baltimore, Maryland.
JOHN BUTLER, *Austin, Thorp & Co., New York.*
ALBERT INGARD,
Rubber Clothing Company, New York, Chicago, Saint Louis, and San Francisco.
JOHN BUTLER, Jr., *John Thompson & Co., New York.*
PATRICK J. MCPHILLIPS,
W. H. Hortsmann & Co., New York, Philadelphia, and Paris, France.
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General Superintendent Champion Cotton-Gin Company.
102 *State street, Boston, Massachusetts.*
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H. Block & Co., 23 *and* 25 *East Second street, Cincinnati.*
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Bodenheim, Meyer & Co., 149 *Duane and* 9 *Thomas street, New York.*
HENRY M. WOOLF, *Willard Felt & Co., New York.*
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J. T. SANDFORD,
Giles, Grales & Co., 13 *Maiden Lane, New York.*
JOHN G. IRISH,
Charles Lippincott & Co., 914 *and* 916 *Filbert street, Philadelphia.*
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J. P. Todd,
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Nath. P. Snelling, *Pearson Bro's & Co., Boston.*
Alex. Lamby, *Paton & Co., New York.*
J. W. Blake,
Of Hall & Blake, 20 Courtlandt street, New York.
U. F. Wilcox,
John S. Dunham, 117 North Sixth street, Saint Louis, Missouri.
Samuel Friedman, *40 Maiden Lane, New York.*
Charles Lee, *Charles Lee, Boston, Massachusetts.*
D. Davies,
Of A. M. & R. Davies, 508 Broadway, New York.
L. Wilkins, *A. Henderson, 82 Water street, New York.*
F. C. Rogers,
Of H. A. Rogers & Co., 50 and 52 John street, New York.
W. N. Johnson, *of Mills, Johnson & Co., Cincinnati.*
Walter Lyon, *Saint Louis, Missouri.*

Editorial article of the New York Herald, of December 26, 1872.

Is this a republic, and is Louisiana one of the United States?—Either this is a republic or it is not. Either the States manage their own local affairs or they do not. Whatever appearances may denote, we believe we are not rash in assuming that the people of the United States do live in a republic; further, we boldly quote the Constitution and decisions of the Supreme Court to prove it incumbent upon the United States "to guarantee to every State in the Union a republican form of government." In other words, every State is a republic within a republic. Now, as our creed in the late civil war affirmed secession to be unlawful, as we proved the right by our might on the battle-field, Louisiana is in the Union, because she never was out of it, and is entitled to a republican form of government, because she is a State. Hence it follows that the imperial policy being pursued toward her is an unwarrantable insult to a conquered, law-abiding, free (?) people. Ignorance is a two-edged sword. Negroes demoralized by designing leaders are no better than low whites demoralized; and what if a legislature like that of Louisiana should become uncontrollable? Already its members are loud in their threats against their defeated opponents. May it not be possible for them to turn upon their white instigators? We say this not because negroes are black, but because these particular negroes are from necessity totally uneducated, and have been played upon ever since they had political power.

Undoubtedly it was a mistake in the liberal republicans of Louisiana to dally with Warmoth in the late election. * * * * In spite of their aversion they accepted his aid; but his is the power of the boomerang, and returns to delay, if not to destroy, reform. Few of the New Orleans committee but were his fierce opponents in the past; yet the administration organ in this city intimates that they are "really acting in the interest of Warmoth." And what do this committee ask—a committee representing such vital interests as to draw around them thousands of citizens to wish them "Godspeed" when, in a drizzling rain, they depart for Washington? What do they ask? Anything unreasonable? Why, their story is twice told; and yet we shall repeat it again and again, in the hope of bringing the North to its senses and Congress to its duty.

They ask the Federal Government to make a candid and impartial investigation of the facts we have so often put before our readers. They maintain, and we have every reason to believe them, that they have not heretofore been concerned in the controversies among the political classes which have endangered the peace and brought scandal upon the State. They picture two distinct governments claiming sovereign jurisdiction, the United States and State courts in direct conflict, Judge Durell, under color of the enforcement act, overturning the entire State administration with one hand, while he seizes an opposition newspaper with the other, plotting, we are told, for a nomination to the Federal Senate. No wonder that strong men weep; no wonder that commercial travelers in New Orleans, representing more than thirty New York houses, address a memorial to the people of the North, protesting against the "arbitrary usurpation of power and place by political adventurers, backed by a United States judge, who has called in the assistance of United States troops to execute his decrees!"

It was not treason that the liberal republican governor-elect preached. From all sides we learn that the State election was peaceable. There was every evidence at first of John McEnery's election, and that he should have asked the President to suspend recognition of both governments until there could be laid before him all the facts, seems to us based upon far more sense of justice than Attorney-General Williams's immediate recognition of Pinchback, who, with a roving commission from nobody, but

supported by Federal bayonets, now legislates headlong out of office whatever senator or assemblyman incurs his dread displeasure.

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We do not believe, nor do the committee believe, that the President desires to tyrannize over the South. * * * General Grant asks for peace, and we contend that a peaceable union is utterly impossible so long as there is usurpation in any part of the country. Northern republicans disbelieve in the sincerity of southern Unionists, and hence are ready to support carpet-baggers. We assure them that no disbelief ever had less foundation in fact; that no people were ever more ready to accept the situation; but that the best way to foster hatred and revolution is to carry out the guerrilla warfare of adventurers like Pinchback. It is quite possible for a negro or a northern man to be a rascal. It is quite possible for a southern man to be honest. Let honesty prevail, and good government will ensue. Let Congress demand a thorough investigation, appointing investigators without fear and without reproach, and Louisiana will be satisfied. Her best people are not so much averse to Kellogg as they fear his legislature. Let the election records be closely scanned. Attorney-General Williams admits that there may have been "irregularities in the registration and election." "Irregularities" is a mild term for tampering with the ballot-box, the ægis of our liberty, and comes with rare grace from the Attorney-General of the United States; but the admission is alone sufficient for action, and if upon re-assembling Congress does not hearken to the voice of press and people, we shall believe that there are things far more rotten here than in Denmark.

Hon. GEORGE H. WILLIAMS,
Attorney-General of the United States:

SIR: A memorial signed by a number of citizens of the State of Louisiana, directed to the President of the United States, and to the Congress of the United States, was placed in the hands of the President the 19th December last by a committee charged to perform that duty; the committee at the time informed the President that a communication would be prepared to explain the memorial, and this, he said, would be properly addressed to yourself. On behalf of our fellow-citizens, and of ourselves, we have prepared this communication, and respectfully ask that it be submitted to the President, and, through him, to Congress.

The memorial of the citizens of Louisiana, whose names are attached to it, was designed to place before the President and Congress *grievances* suffered by the people, principally through the orders and decrees of the circuit court of the United States for the district of Louisiana, which had been executed by the employment of the Army of the United States. We aver that these orders and decrees were *extra judicial*, were beyond the competency and jurisdiction of that court, and in violation of the peace and dignity of the State of Louisiana. In support of this conclusion, we say that the circuit court of the United States is a court of limited jurisdiction, and that its limits are determined by the acts of Congress which have established the court. This jurisdiction, in cases of law and equity of a civil nature, (except in a few and designated instances,) depends upon the citizenship of the parties to the suit. Except in these special cases, the court has no jurisdiction of controversies between citizens of the same State. No act of Congress has provided, and we may add that Congress could not properly provide for the maintenance in that court of a suit by a citizen of a State against the governor or other public officers of the State, or direct him or them in the performance of duties under a statute of a State in a matter of municipal concern. The juridical and professional opinion, as well as the official action of the authorities of the State and Federal Governments, have recognized a broad division as to the subjects of their respective jurisdictions, and, generally, there has been care and circumspection on the part of both to avoid all occasion for interference or collisions. The

reports of the Supreme Court of the United States disclose the wisdom which has been employed in establishing the rule, and the conscientiousness with which it has been supported and applied.

The application in practice of this principle has been salutary, being productive of harmony and peace.

No instance can be found in the judicial administration of the United States, in which an authority has been claimed to control the action of an officer of a State, in the exercise of functions imposed by a statute of the State, and affecting persons and things exclusively within the jurisdiction of the State. No instance is remembered in which it has been supposed by any court of the United States that it had any control over the election of the municipal officers of the State. The appearance in a court of the United States of candidates for the offices of governor and of lieutenant-governor, to control the governor of the same State and the canvassing boards in relation to the ascertainment of the result of the election to those offices and other municipal offices, is a novelty, and the consequences of such a jurisdiction are so far-reaching that inquiry is called for. If it be found that a jurisdiction has been assumed, unwarranted by the Constitution or the laws of the United States, a remedy ought to be firmly applied.

The only power granted by Congress to a circuit court having any relevancy to this subject, is to be found in the 23d section of the act of Congress approved 31st May, 1870, called the enforcement act, and designed, as its title declares, to maintain the rights of citizens to vote at elections. An examination of this section shows that it is intended to preserve the rights of the candidate who shall be defeated or deprived of his election, by reason of denial to any citizen or citizens of their right to vote on account of race, complexion, or previous condition of servitude. The remedy granted to such a candidate is a faculty of maintaining an appropriate suit in a circuit or district court of the United States, and that the court shall have jurisdiction "to determine the rights of the person to such office, by reason of the denial of the right secured by the thirteenth amendment to the Constitution of the United States." This section of the act of Congress determines the only case, and defines the limit and the quality of the jurisdiction conferred. The case is a single one, confined to a specific subject and form of claim, and the duty of the court is carefully defined. We shall not inquire concerning the validity of the act of Congress, nor raise any question with the circuit court of Louisiana, which is within the bounds of this section.

From the operation of the jurisdiction of the courts of the United States, granted by this section, the members of Congress, *members of the State legislature*, and the electors of President are excluded. None of these can bring such a suit as the act contemplates for other cases. William Pitt Kellogg filed a chancery bill in the circuit court of the United States at New Orleans, the 16th of November last, against the governor, (Warmoth,) Wharton, Hatch, Da Ponte, members of a canvassing board, against his competitor, McEnery, and the publishers of the official journal of the State, all citizens of the State. He states that he had been a candidate for the office of governor at an election which took place on the 4th of November, 1872, for the executive and legislative and judicial officers of the State, and was opposed by McEnery. He complains that the governor, Warmoth, had declared that he should defeat him by all means in his power, and by the abuse of powers, and that the governor had used and abused powers. That he (Kellogg) believed the votes of ten thousand persons of color entitled to vote had

been excluded because of their complexion and previous condition of servitude. He charges, too, that the votes had not been properly counted—to his prejudice—and that the returns made were false and fraudulent. He further complains that Warmoth had organized a returning-board, composed of himself and the defendants, and that the legal board was Warmoth, Lynch, Hawkins, Longstreet, and Herron. His apprehension, and the cause of his suit, is, that it was the purpose of the defendants to make such a pretended canvass of the votes as should effect his apparent defeat, and declare McEnery governor of the State; that this catastrophe would deprive these persons of their suffrage who had been excluded because of their race and color, and would give effect to false, fabricated, erroneous, and wrongful returns. The bill shows there had been no action of either of these boards, and that no result had been ascertained or declared. The law of the State is, that the governor and lieutenant-governor elected in November shall not be inaugurated until January after. There was no adverse possession of an office this plaintiff had desired to fill.

It is manifest from the bill itself that the case provided for by the twenty-third section of the act of Congress had not arisen, and might not arise. The case made by the bill is a case to control the organization of the returning-board, to try the title of the governor and the board acting with him, and to set up in their absence a board nominated in the bill, but none of whose members were before the court as parties.

On the face of the bill the case is not within the purview of this delicate and difficult statute.

We shall furnish the bill, with this paper, that it may be examined.

The *ex parte* order, for restraining the defendants, we shall now examine. We cannot be mistaken as to the import of this order. The suit authorized is a suit at law between two parties for an office, of which one has been deprived by the existence of a specific form of facts. The restraining order of the court takes under its cognizance and control the entire results of an election for executive, legislative, and judicial officers of the entire State, at a general election, pursuant to the constitution. There is no limit of the inquiry to the contest between Kellogg and McEnery, but the court grasps the oversight and direction in reference to all of the returns of all of the officers appointed under the laws of the State in reference to the election. This order is made upon the submission of the bill, and will be found on the fourteenth and following pages of the pamphlet record of the case of Kellogg.

The governor, Wharton, Hatch, Da Ponte, McEnery, and the publishers of the New Orleans Republican are the subjects of this order. These are restrained from considering or canvassing any certificate, statement, return of any supervisor of registration, except in presence of the four persons, Lynch, Hawkins, &c., &c. The governor is ordered to desist and to refrain from submitting to his co-defendants, as members of a board, statements, certificates, or returns of elections, and to desist from recognizing, or permitting them, or any others but those first named, (Lynch, &c.,) to inspect, consider of, or have access to statements, certificates, returns, affidavits, proofs, relating to said election, and he is told in the order that it is his duty to submit these to Lynch and his associates, as the only legal board. The governor, Wharton, and others, are commanded not to proceed as a board, and McEnery is commanded to set up no claim to the office of governor, and the official journal is forbidden to publish the evidence they may furnish.

The committee find it difficult to characterize properly an order of this

sort. It is an *ex parte* order—in a case of Kellogg, a candidate for a single office, who apprehends defeat, and menaces a contest. But the suit of Kellogg disappears from the order except in its injunction upon McEnery. The order contains a prejudication, that the court has the oversight and control of an election in every part of the State, to determine who are to act as the canvassing-boards and who shall not act, also what effect is to be given to the acts of one board, and that none shall be given to the other.

The governor of the State is commanded as if he were a servant of the court.

We call attention to the twenty-third section of the enforcement act, before cited, and direct attention to the order in its vast extension beyond the jurisdiction conferred upon the court by that section of the act of Congress. The election returns of the State by this order were taken under the jurisdiction of the court.

The governor of the State afterward convened the State legislature to meet the 9th November, 1872. The publication of the returns of the election, for those officers, and others essential to the State administration, it may be assumed was not within the scope of the suit of Kellogg, or the power of the court. But the circuit court seems to have concluded that its commission was at least as broad as that of the Roman dictator.

An order was made in the case of Kellogg, which bears date the 5th December, 1872. This order was published by the official journal of the State in an *extra*, with the facts connected with its execution, the 6th December, 1872. The order as thus published and the remarks on it in the journal are as follows:

About 2 o'clock this morning General Jackson, in command of a portion of a regiment of United States infantry, marched to the State-house, and took up quarters there.

This proceeding was the result of an order issued by Judge Durell, published to-day.

Outside the State-house was a small gathering of citizens, all undemonstrative.

Mr. Bovee, secretary of state, visited his office and took charge of it without hinderance.

Governor Warmoth was not interrupted in his personal movements, but came and went as suited him.

All others having business in the State-house were permitted to pass to and fro.

Not a single policeman was in sight on duty.

The Lynch board of returning-officers is in session over the Germania Bank, and Mr. Bovee is taking part in the proceedings.

Circuit court of the United States, fifth circuit and district of Louisiana, in equity—No. 6830. William P. Kellogg *vs.* H. C. Warmoth *et als.* Whereas Henry C. Warmoth, one of the respondents herein, has, in violation of the restraining order herein, issued the following proclamation and returns of certain persons claiming to be a board of returning-officers, all in violation and contempt of the said restraining order, as follows, viz:

PROCLAMATION.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, December 4, 1872.

Whereas P. S. Wiltz, Gabriel De Feriet, Thomas Isabelle, J. A. Taylor, and J. E. Austin, returning-officers appointed by the governor to fill vacancies existing, in accordance with the constitution and laws of the State of Louisiana, have made declaration of the result of an election held November 4, 1872, and have delared certain persons elected to the senate and house of representatives of the State of Louisiana, as

will appear from the returns herewith attached and made a part of this proclamation; and

Whereas such returns are compiled from the official returns of commissioners of election and supervisors of registration, on file in this office, and are in fact and in form accurate and correct, and made in accordance with law:

Now, therefore, I, Henry Clay Warmoth, governor of the State of Louisiana, do issue this my proclamation, making known the result of said election aforesaid, and command all officers and persons within the State of Louisiana to take notice of and respect the same.

Given under my hand and the seal of the State, this fourth day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

H. C. WARMOTH.

By the Governor:

Y. A. WOODWARD, *Assistant Secretary of State.*

Now, therefore, in order to prevent the further obstruction of the proceedings in this cause, and further, to prevent a violation of the orders of this court, to the imminent danger of disturbing the public peace, it is hereby ordered that the marshal of the United States for the district of Louisiana shall forthwith take possession of the building known as the Mechanics' Institute, and occupied as the State-house for the assembling of the legislature therein, in the city of New Orleans, and hold the same subject to the further order of this court, and meanwhile to prevent all unlawful assemblage therein under the guise or pretext of authority claimed by virtue of pretended canvass and returns made by said pretended returning-officers in contempt and violation of said restraining order; but the marshal is directed to allow the ingress and egress to and from the public offices in said building of persons entitled to the same.

E. H. DURELL.

In obedience to this order, the United States marshal called upon General ———, commanding department, for a military force to execute the above order, which was promptly furnished and possession taken of the institute at an early hour this morning, and the marshal is now in possession.

It will be seen that this order, too, is *ex parte.* It assumes that the governor has committed a contempt, by a publication, which the order of the court recites. Besides this, the court undertakes the office of conservator of the peace, and to maintain it, directs a garrison to be placed in the State capitol, and forbids, as an unlawful assemblage, the legislature, referred to in the governor's proclamation, to be convened there.

We are not aware of the existence of any disorders, riots, tumults, menaces of insurrection, or violence at this date. There was domestic tranquillity, and the absence of any disturbance or disquiet—unless it were in the court. Upon what authority of statute, or what ground existed in the proceedings in the case of Kellogg, to authorize a court to make an order of this kind, and to secure its execution in the manner stated in the official journal, this committee have not been able to discover.

About this juncture C. C. Antoine, a candidate for the office of lieutenant governor, sought the interposition of the circuit court to secure him in that office. His induction into office, even if he had been duly elected, and there were no counter claim, could not take place before January. In this respect his term commences like that of the governor. But he was apprehensive of some evil, and claimed very much, as did the governor. The organization of the legislature, to be convened on the 9th of November, was the matter to be effected by the orders of the circuit court, and it is upon his bill that the order we now submit was issued and promulgated.

We shall supply a copy of the bill and of orders attached, and do not therefore state the former with more particularity.

This restraining and mandatory order we are compelled to state for the subject of comment.

This order appears in the official journal of the State of Sunday, the 8th of December, 1872, the day prior to the assemblage of the State legislature, as appointed in the proclamation of the governor.

Notice is called to it by a caption, "ANOTHER *bill in equity*." "*Protection to the State legislature*." "Hands off, all round." "*Read, ponder, observe*." Certainly the order thus published should be deliberately read, and the contents should be the subject of grave consideration. The like of it will not be found in the annals of the United States, or of any State.

The circuit court, upon the bill of Antoine, (who had no participation in the proceedings of the legislature, who was, as matter of fact, an officer in the Treasury Department of the United States at this date,) procures the injunction to the governor of the State, under whose proclamation the State legislature was to assemble. The governor was enjoined and restrained, in any manner, by himself or through any other officer of the State, city, or parish, or other person, from controlling or interfering with the organization of either branch of this general assembly of the State to assemble the 9th December, 1872, or that may be called to assemble at any future day; or to prevent any person from entering the State capital, or to hinder any one from participating in the organization who shall have a certificate from the Lynch board before referred to; or from aiding any one not so returned; or from doing any act or from giving any order or direction, or making any request to prevent the organization of the legislature returned by that board, or to aid or to abet any one who is not returned by that board, from participating in the organization of the house. He is required not to interfere with the secretaries of the two houses from rendering full obedience to the orders of the court. But the governor is allowed to act, provided he will do so, with the board which the court has accepted.

The members who had been declared to be elected were required not to participate in any assembly unless the members were returned by the same board. One-half of the senate were chosen at this election, and the order of the court embraces them, and every member of the house of representatives.

The secretaries of the senate and of the house are directed particularly that they shall use a specific roll, as furnished by Bovee, as the true senate and the true house of representatives, and that none other shall be used, and no one not on that roll shall have recognition as senator or representative. The secretary of state, Bovee, is directed to make certificates upon the returns of a single designated board, and none other.

The metropolitan board of police, its commander and men, are put under restraint, and all the persons belonging to the canvassing-boards and officers other than the one acting are placed under an injunction.

The bill of Antoine and this order were not debated or discussed in court prior to its date. It came before the people of the State by surprise. The impression made by the order is simply one of amazement. It is a sounding cataract; mandate after mandate rushes along, breaking the barriers of the constitution, law, judicial practice and precedure, and the ancient land-marks of jurisdiction in the courts of the United States. The traditional stagnation of the waters of a chancery court has been disturbed in a manner never heard of before this date. We hold, Mr. Attorney-General, that the American State and Federal constitutions, without an exception, give to the respective houses that compose the general assembly the entire and exclusive jurisdiction over questions relating to their organization. Each house decides upon its rules of proceeding, and upon the election and qualifications of its mem-

bers. Unless the constitution provides otherwise, they select their own officers and control them. It is entirely beyond the power of the imagination of this committee to conceive that there is any constitution, law, custom, rule, precedent, or other form in which authority is manifested, to justify this order of the circuit court of the United States. The adjudged cases, with which our intelligence has had connection, place a seal of emphatic condemnation upon it as beyond the judicial power, however large, under our institutions. Such an order from the circuit court of the United States, under the presidency of the associate justice and the judge of the circuit court, would fill the country with dismay if the country happened to be weak, with determination and energy requiring indemnity if strong. This committee and their constituents supposed that from a court thus composed such an order was a far distant possibility. It was therefore the committee made an application that the judges who constitute that court in its superior condition should inquire into the validity of these orders.

This committee, acting on behalf of themselves and their constituents, say that they have not supposed that Congress would entertain any complaint by the citizens of a State against the officers composing the State government for their misconduct, their maladministration of the laws of the State, except under very particular and peculiar conditions, which can hardly ba stated in advance of their occurrence.

They have, thererore, commenced these complaints with the account of the exorbitant and usurping action of the circuit court of the United States in the cases of Kellogg and Antoine, two candidates for offices, who are yet not entitled to be installed if they had been unanimously voted for at the election on the 4th of November, 1872.

Whether the candidates Kellogg and Antoine should fill the offices of governor and lieutenant-governor of the State for four years after a day in January, 1873, may have much importance to them, as well as to the people of the State. These persons, if deprived of this coveted enjoyment by the occurrence of a prescribed condition in the twenty-third section of the act of May, 1870, were entitled to bring a civil suit in the circuit or district court, but these suits were brought upon premature anxieties and apprehensions. But the suits they brought and the orders made have but little connection. These names appear in the title of the cases in which the orders appear, but apparently for the purpose of showing that there was a case in the court. The substantial jurisdiction exercised is over the election of the 4th of November, 1872—the executive, judicial, legislative officers, the election of members of Congress, and of presidential electors. The injunction order to the governor of the 16th November, of the 5th of December in the case of Kellogg, and that in the case of Antoine, comprehend the action of the people at that election in all of its extent and operation. The contempt which is recited in the order of the 5th of December is for a general act of administration done by the governor under a statute of the State. This act is made a ground not for a proceeding against Warmoth for a disobedience of the order, but for an order to seize the capitol, to treat a body called by the governor as an unlawful assembly, and for a call for a regiment of soldiers of the United States Army to support this court and its authority.

It was thus that the circuit court in its order dated the 5th December, in the case of Kellogg, and its contemporary order in the suit of Antoine, retorted upon the people of the State the contempt with which it charged the governor as guilty in publishing the election returns. The court seems to have decided that this publication furnished undisputable evi-

dence that whatever certificate came from the Lynch board must be supported by chancery order, with a military force to maintain it.

The seizure of the capital, and the *impaneling of a legislature* upon *venire facias* to the selections of the Lynch board, and by the requirement upon the secretaries of the two houses, to follow prepared lists described in the chancery writ, appear to be parts of a carefully prepared scheme of organization of the legislature by the court. In looking to the breadth of these orders, and the supercilious spirit in which they seem to have been made, the *marvel* is that they should not have comprised more. The State might have been placed in the hands of a chancery receiver with quite as much propriety as in the hands of such a legislature, and an order for a receiver would have been congruous to chancery modes of procedure, and would have had more likeness to judicial action. It is impossible to have any other sentiment in reference to this judicial action than that of indignation. The committee cannot doubt that the President and Congress will vindicate the Constitution of the United States, and maintain the rights of the people of the State in their integrity. The facility with which this revolution has been made cannot but awaken apprehension, and to call for guarantees to the stability of State governments.

The fact that the circuit court has exercised a jurisdiction and granted orders which were beyond the scope of its jurisdiction and authority, against the peace and the dignity of the State, the committee regard as unquestionable. Such being a fact, the court was entirely in fault for having made the orders, and having sought for a military force to carry them into execution. Such orders go forth without authority, and have no lawful claim upon any party for respect or for obedience. Had there been resistance, all of the responsibility for that resistance would have been chargeable upon the illegal orders, and not upon those who were not by any law or constitution liable to them. The court, in issuing commands to the governor of the State, to the officers of the executive department of the State, to take possession of the State capital, and to impanel a State legislature, with a demand of a military support, contemporaneously with the signature of the orders, seems to have been cognizant of their dangerous import, as the court must have been aware that they were without a precedent.

We consider it to be irrelevant to the discussion to inquire into the truth of the allegations of the bills, either of Kellogg or of Antoine. The orders that have been executed were for the most part made and executed before any requirement upon the parties to the cause to admit or to deny them.

They were made *ex parte* and out of court. The time, place, and conditions of their signature may be a proper matter for inquiry. But the fact that they were not signed with notice to the parties sufficiently appears upon the record of the suits. Nor did any one of those parties have any capacity to answer, as the court had no capacity to examine how the State legislature should be organized. There has been published a telegram from the marshal of the court, which contains matter connected with the returns of one of the board, which we attach. If this statement be true, it would seem that the State legislature was chosen by the board in a manner as singular as the orders of the circuit court.

The committee have submitted their case to the constitutional tribunal of the country. If it be true that the circuit court had no jurisdiction to deal with this subject in the manner presented by these orders, it would seem to be proper for the Congress of the United States to take

cognizance of that fact, and provide that the powers of that court should not be perverted.

If the government of Louisiana be one established by the illegal orders of the circuit court, supported by the use of the Army of the United States, the duty of Congress to inquire into all of the conditions and circumstances under which it was done would seem to be clear.

If the persons placed in the government of Louisiana derive their title mainly by the fact that there was superior power to support those who were interested and concerned to set up a government of their own, and that the government set up was thus established, it is not a republican government, but an illegal, illegitimate, and usurping government. The case is one into which there should be inquiry. A portion of the citizens of Louisiana believe that this government has no better title than that which is derived from the orders of the circuit court, and the armed interference for their execution.

They believe that there was not an examination of official returns or other legal evidence of an election by the board which had the support of these authorities; that the government is illegal and illegitimate. It is in vain to look for redress from the usurpers. It cannot be expected that they will abdicate their position. But, if the government be the offspring of illegal and unauthorized action of the Federal court without authority, Congress may guarantee a republican form of government. It is that there may be indemnity for the past and security for the future that a large number of persons, who have an interest in the State, as citizens, have placed their memorial in the hand of the President.

Respectfully submitted.

JOHN N. CAMPBELL,
Chairman of Committee.

APPENDIX.

RESTRAINING ORDER.

United States of America, circuit court of the United States, fifth circuit and district of Louisiana, November term, A. D. 1872. *New Orleans, Saturday, November* 16, 1872. *Court met pursuant to adjournment. Present the Hon. E. H. Durell, district judge. William P. Kellogg* vs. *H. C. Warmoth et als., No.* 6830.

On motion of J. R. Beckwith, counsel and solicitor for complainant, it is ordered that H. C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, John McEnery, and the New Orleans Republican Printing Company, publishers of the New Orleans Republican, a newspaper, being the official journal of the State of Louisiana, be enjoined and restrained from in any manner, either directly or indirectly, pretending to consider or canvass any certificate, statement, or return of any supervisor of registration, except in the presence of the legal returning-officers named in the bill of complaint filed this day, to wit: John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron; and it is further ordered that the said H. C. Warmoth desist and refrain from submitting to the defendants, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, or any or either of them, either as pretended members of any board of returning-officers of elections of the State of Louisiana, or as individuals, any statements, certificates of returns, or pretended statements, certificates, or returns of election, and to desist from assisting, aiding, abetting, or permitting any other person or persons whatsoever other than John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron, or their duly qualified successors, as returning-officers, to inspect, consider, or have custody of or access to said statements, certificates, or returns of said supervisors of registration, or any other paper, document, affidavit, or proof that may have come into the hands

of said Warmoth, or shall hereafter come into his hands, relating to said election, or to the fairness or correctness thereof, and which by law it is his duty to submit to the said John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron, the said legal board of returning-officers of elections, and which should be properly considered by them.

And it is further ordered that the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, and each of them, be commanded and enjoined to refrain and desist from pretending to act together as a board of returning-officers, or as returning officers of elections, from canvassing or attempting to canvass or consider any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election mentioned in the said bill of complaint, and from attempting to make a canvass, to make, declare, or publish any pretended deduction, calculation, statement, or proclamation based thereon, or pretended to be derived therefrom, in any way relating or pertaining to said election mentioned in the said bill of complaint, held on the 4th day of November, 1872, or certifying to any candidate for office at said election, any certificate of election, or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating, or destroying any document, paper, voucher, proof, statement of votes, or certificate relating to said election. And it is further ordered that the said John McEnery be commanded, enjoined, restrained, and inhibited from in any manner acting or pretending to act as governor of the State of Louisiana, and from making any pretensions or asserting any claim to the office of governor of said State by virtue of any pretended evidence of election thereto under or by virtue of any certificate, document, or count, canvass, or adjudication now or hereafter made by the said defendant, H. C. Warmoth, and the said defendants Jack Wharton, Frank H. Hatch, Durant DaPonte, in this bill charged to be unlawfully combined and conspired as returning-officers. And it is further ordered that the said New Orleans Republican Printing Company, under whose control and direction the newspaper called the New Orleans Republican, the official journal of the State of Louisiana, is published, whereof W. R. Fish is president, be enjoined and restrained from in any manner publishing any official notice, document, or statement relating to any canvass or statement of votes made, or pretended to be made, or in any manner emanating from the said H. C. Warmoth, and said Jack Wharton, Frank H. Hatch, Durant Da Ponte, or either of them, as a pretended board of returning-officers of elections, in any manner relating to the said election held on the 4th day of November, A. D. 1872.

And it is further ordered that the said defendants H. C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, John McEnery, and the New Orleans Republican Printing Company, named in the bill of complaint this day filed, be so commanded, enjoined, and restrained, until the further order of this honorable court.

Circuit court of the United States in and for the district of Louisiana.—In equity, No. 6851.
C. C. Antoine vs. *H. C. Warmoth et als.*

RESTRAINING ORDER.

Whereas, the plaintiff herein has this day filed and exhibited his bill of complaint against the said defendant, H. C. Warmoth, and the other defendants named in said bill of complaint, and has therein prayed that injunctions, *pendente lite*, issue against the defendants therein, and that a restraining order be also issued restraining the said defendants, as prayed for in said bill, from doing, or permitting to be done, the acts in said bill complained of.

Now, therefore, on motion of J. R. Beckwith and E. C. Billings, solicitors for complainant, it is ordered that the defendants named in said bill do show cause, on the eleventh day of December, 1872, why injunctions, *pendente lite*, should not be allowed as prayed for. It is further ordered that said defendants, each and every one of them, be and are hereby commanded and restrained to the extent and effect as in said bill of complaint prayed, (the clerk will attach to this order a copy of the prayer for injunction, as set forth in said bill of complaint,) until the hearing and determination of said rule for injunction, and until the further order of the court in the premises.

E. H. DURELL, *Judge.*

Wherefore your orator humbly prays that your honor will grant unto him all just and proper relief in the premises; that you will allow and grant unto him the most gracious writ of injunction issued under the seal of this honorable court, directed to the said defendant Henry C. Warmoth, enjoining and restraining him from in any manner directly or indirectly, by himself or through any other officer of the State, city,

or parish, or through any other person, from controlling or attempting to control, interfering with or attempting to interfere with the organization of either branch of this general assembly of the State of Louisiana, called to assemble on the 9th of December, A. D. 1872, or that may be called to assemble at any future day, and from directly or indirectly, either by himself or through any other person, preventing any person claiming to be a member of said general assembly from having full and free ingress and egress to and from the place, building, and room of that branch of said general assembly of which he may claim to be a member, or from issuing any written or oral order or instruction, request or direction, calculated or designed to directly or indirectly control or interfere with the organization of either of the branches of said general assembly, or calculated or designed to prevent any person from having free access thereto who claims to be a member thereof, and from doing any act or from giving any order, direction, or making any request which may, directly or indirectly, prevent or hinder any person from being present and taking part in the organization of said senate, called to convene on the said ninth day of December, or at any future day, who may be returned as a member thereof by the board of returning-officers, composed of the said Henry C. Warmoth, George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose name shall also be transmitted by the said George E. Bovee, secretary of state, to Charles H. Merritt, the secretary of the senate of the last general assembly, and placed by the said Merritt upon the roll of said senate so to be convened, and from in any manner, directly or indirectly, aiding or abetting any person who is not so returned by said returning-board as a member of said senate, so to be convened, and whose name is not so transmitted as a member elected to said senate, and is not so placed upon the roll of said senate, from participating in the organization of said senate, and from doing any act or from giving any order, direction, or making any request which may, directly or indirectly, prevent or hinder any person from being present and taking part in the organization of said house, called to convene on the said ninth day of December, or that may be called to convene at any future day, who may be returned as a member thereof by the board of returning-officers, composed of the said Henry C. Warmoth, George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose name shall also be transmitted by the said George E. Bovee, secretary of state, to William Vigers, the secretary of the house of the last general assembly, and placed by the said William Vigers upon the roll of said house, so to be convened, and from in any manner, directly or indirectly, aiding or abetting any person who is not so returned by said returning-board as a member of said house, so to be convened, and whose name is not so transmitted as a member elected to said house, and is not so placed upon the roll of said house, from participating in the organization of said house.

Except that the said Henry C. Warmoth is not hereby prohibited from participating in the canvass and return of the members elected to the said branches of the general assembly so to be convened, provided he do the same in conjunction with and in the presence of said George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, but not otherwise; and that he further be enjoined and restrained from in any manner obstructing or hindering the said William Vigers, clerk of the house of representatives, or the said secretary of the senate, Charles H. Merritt, in the free and unobstructed discharge of their duties, or in full and complete obedience to the orders of this court, and from suspending, removing them, or either of them, from office, or appointing or ordering, or abetting any other person or persons to perform any act which by law or the orders of this court devolves on either the said Vigers, Merritt, or upon George E. Bovee, secretary of state, and from recognizing any validity in any act done or performed by any other person or persons pretending to act in the office or capacity of either of said officers.

And that a writ of injunction may also issue, directed to A. S. Badger, chief of metropolitan police, and to each member of the board of the metropolitan police, and to the board of metropolitan police, enjoining and restraining them, and each of them, from interfering in any manner with the organization of either branch of the general assembly, to be convened on the ninth day of December, 1872, or at any time thereafter, except to preserve the peace, and to prevent no person from having access to either of the halls of said houses who is certified by George E. Bovee as being a member-elect of the same.

And that writs of injunction also issue, directed to the said E. Booth, A. Voorhies, A. J. Lewis, B. F. Jonas, T. B. Stamps, D. S. Cage, R. C. White, T. C. Anderson, J. M. Thompson, E. S. Weber, A. S. Herron, Robert Worrall, O. H. Brewster, E. M. Graham, J. W. McDonald, A. H. Leonard, C. J. C. Puckett, James G. White, J. F. Kelly, enjoining and restraining them, and each of them, from participating, in any manner, in the organization of the senate to be convened on the ninth day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or about the organization of said senate, either by casting a vote or otherwise, unless his name shall be and appear on the list of names of members of said senate, transmitted to the

secretary of the same by George E. Bovee, secretary of state, as having been elected thereto.

And that a writ of injunction also issue to the said J. J. Mellon and James Timony, J. A. Shakespeare, J. A. Rice, J. J. Finney, E. H. McCaleb, Charles Montaldo, W. B. Barrett, W. L. Stanford, T. B. Blanchard, jr., F. C. Zacharie, F. Fusillier, V. O. King, A. Garidel, L. S. Rodriguez, John Barrow, John Delaney, William Stevens, W. C. Kinsella, C. Kummell, J. B. Eustis, J. McConnell, A. J. Dumont, E. L. Bowers, E. Riviere, P. Landry, C. N. Lewis, E. B. Cox, Numa Vives, T. J. Edwards, W. K. Johnson, T. L. Mills, T. Bynum, J. S. Gardere, J. L. Lobdell, W. S. Cockernam, W. H. Scanlan, L. P. Sandidge, J. C. Moncure, George L. Smith, J. Sella Martin, W. H. Kirkman, Thomas J. Humble, Paul Jones, George C. Bonham, Cain Sartain, Allen J. Davis, W. F. Moreland, Thomas Price, David Young, George Washington, J. P. Elam, A. F. Stephenson, John Gair, James Laws, James W. Armstead, F. W. Norris, J. H. Haduot, L. A. Snaer, J. K. Cavanaugh, E. A. Hubin, William Kerr, C. W. Lowell, J. T. Trahan, John S. Billiu, O. Harang, T. G. Davidson, James R. McDowell, C. C. Davenport, E. L. Pierson, W. A. Ponder, W. F. Southard, D. Hill, H. Mahoney, J. P. Harris, L. B. Claiborne, L. Texada, John J. Swan, J. G. P. Hooe, E. W. Dewees, H. F. Vickers, J. F. Smith, R. V. Ducros, M. Hahn, D. K. Gorman, Henry Demas, Benjamin R. Gantt, J. F. Little, E. D. Estilette, L. D. Prescott, V. Bochon, L. A. Martinet, James Costello, M. J. Foster, J. G. Tate, J. R. Stewart, J. S. Matthews, J. J. Booles, P. Fontelieu, J. R. Smart, A. C. Bickham, J. P. Schultz, William A. Strong, enjoining and restraining them, and each of them, from participating in any manner in the organization of the house of representatives, to be convened on the 9th day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or about the organization of the same, either by casting a vote or otherwise, unless his name shall be and appear on the list of names of members of said house, transmitted to the clerk of the same by George E. Bovee, secretary of state, as having been elected to the same.

And that a writ of injunction may also issue, directed to Charles H Merritt, secretary of the senate of the last general assembly, enjoining and restraining him from placing, causing, or suffering to be placed upon the roll of the senate, to be convened on the ninth of December, A. D. 1872, or at any time thereafter, or from placing, causing, or suffering to be placed upon any list of members elect to said last-mentioned senate, or from announcing, causing, or suffering to be announced, as a member elected to said last-mentioned senate, or from recognizing, or causing, or suffering to be recognized, as a member elected to said last-mentioned senate, or from in any manner designating, or causing, or suffering to be designated as a member to said last-mentioned senate, prior or during the organization thereof, any person whose name shall not be transmitted to him by George E. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last-mentioned senate, and from in any manner acting upon any other list except the one so transmitted by the said George E. Bovee, in the organization of the last-mentioned senate, and to disregard in said organization all other lists.

And that a writ of injunction may also issue, directed to William Vigers, clerk of the house of representatives of the last general assembly, enjoining and restraining him from placing, causing, or suffering to be placed upon the roll of the house of representatives, to be convened on the ninth of December, A. D. 1872, or at any time thereafter, or from placing, causing, or suffering to be placed upon any list of members elected to said last-mentioned house, or from announcing, causing, or suffering to be announced, as a member elected to said last-mentioned house of representatives, or from recognizing, causing, or suffering to be recognized as a member elected to said last-mentioned house of representatives, or from in any manner designating or causing or suffering to be designated as a member to the said last-mentioned house, prior or during the organization thereof, any person whose name shall not be transmitted to him by George E. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last-mentioned house of representatives, and from in any manner acting upon any other list except the one so transmitted by the said George E. Bovee, in the organization of the last-mentioned house of representatives, and to disregard in said organization all other lists.

And that a writ of injunction also issue, directed to said George E. Bovee, enjoining and restraining him from receiving any return or returns of the election of any State officers or of the members of either branch of the general assembly of the State of Louisiana, excepting such returns as may be received by or filed in the office of him as secretary of state from the board of returning-officers, and a majority of the same, composed of Henry C. Warmoth, James Longstreet, and Jacob Hawkins, and John Lynch and himself, and from delivering, causing, or suffering to be delivered to any speaker of the house of representatives any return except received and filed as above stated of any election whatever, or from making, or causing, or suffering to be made any list of names of the members elected to either branch of the general assembly, except from and according to returns so received or filed, as above stated.

That a writ of injunction also issue, directed to the said Jack Wharton and Samuel

Armstead, and each of them, enjoining and restraining them, and each of them, from receiving any returns of the elections held in the State of Louisiana, on the first Monday of November last past, for members of the general assembly, or from transmitting to William Vigers, the clerk of the house of representatives, or to Charles H. Merritt, the secretary of the senate of the last general assembly, or to any other person, any list of names which is, or purports to be, a list of names of such persons, as on the name of any person who, according to any returns, shall have been or shall be stated, or claimed or assumed to have been elected to either branch of the general assembly, called to convene on the ninth day of December, A. D. 1872, or that may be called to convene at any future time, and from making any statement or doing anything calculated or designed to furnish a basis for the organization of either of said branches of the said general assembly, or from delivering or interfering, conniving at, or aiding or suffering any other person to deliver to the speaker of the house of representatives, or any other person, any returns of any election whatever.

And that writs of injunction may also issue, directed to the said Thomas Isabelle, P. S. Wiltz, J. S. Taylor, J. E. Austin, and G. DeFeriet; also issue against the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, and Durant DaPonte, commanding them, and each of them, to refrain and desist from pretending to act together as a board of returning-officers, or as returning-officers of election, from canvassing or attempting to canvass, or consider, any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election, and from attempting to make a canvass, declare, or publish any pretended deduction, calculation, statement, or proclamation based thereon, or pretended to be derived therefrom, in any way relating or pertaining to said election, held on the fourth day of November, 1872, or certifying to any candidate for office at said election any certificate of election, or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating, or destroying any document, paper, voucher, proof, statement of votes, or certificate relating to said election.

NEW ORLEANS, *December* 7, 1872.

To Attorney-General WILLIAMS:

The returning-board provided by the election law of 1870, under which the election was held and which the United States court sustains, promulgated in the official journal this morning the official result of the election for the legislature. The house stands 77 republicans and 32 democrats; the senate 28 republicans and 8 democrats. The board counted the ballots attached to the affidavits of colored persons wrongfully prevented from voting, which were filed with the chief supervisors.

S. B. PACKARD,
United States Marshal.

AN ADDRESS TO THE PRESIDENT AND PEOPLE OF THE UNITED STATES, FROM THE REPUBLICANS OF LOUISIANA, IN REPLY TO THE ADDRESS OF THE CAMPBELL COMMITTEE.

There having been a studious design to misrepresent events in Louisiana during the last two months, through those connected with the press, and also by an address purporting to issue from a committee of citizens, by misstating some facts and concealing others, we feel it our duty, alike to the republican party here and to the public, to make the following candid statement of the history of the recent election in this State, and of the proceedings in the courts connected therewith.

Those who are at a distance from us can scarcely conceive the extent of this misrepresentation. It is, to a large extent, prompted by the whole army of candidates for office on the fusion ticket, and is aided and abetted by all the talent which sympathy with that cause and the lavish expenditure of money, in the shape of fees and in other ways, can procure. This misrepresentation has attacked vindictively the republican candidates for office, while the matter rested simply with the political canvass, and, after the matter had reached the courts, has assailed in turn the counsel engaged in the legal proceedings and the courts be-

fore whom these proceedings have been pending, and, subsequently, when the matter had taken the aspect of a political question, has arraigned the Attorney-General, the President, and Congress itself. What abuse has failed to accomplish has been sought to be attained by an appeal to fears, and there is no person directly or indirectly connected to any prominent degree with the republican movement in this State, who is not almost daily subject to threats of violence and assassination.

The committee, headed by Judge Campbell, set forth that the election was fairly conducted. This pretension is abundantly disproved by testimony that cannot be gainsaid. Not only were republicans debarred in large numbers, throughout the State, their rights to register and vote by the State election officers, but the United States officers of election were forbidden to discharge their duties at some, or all, of the stages of the election. The commissioners of election were without exception members of but one political party, and the registrars seem to have been charged with the especial duty of disfranchising as many republicans as possible. No public notice was in many parishes given, as the law requires, as to the points at which either registration or polls would be opened, and wherever republicans, after diligent yet fruitless efforts to register, were constrained to demand at the polls that their ballots should be received, in accordance with section 3d of the act of 1871, the commissioners were arbitrary in their refusal. United States supervisors were usually prevented not only from interposing in such cases, but from sharing in the custody of the ballot-boxes upon the close of the election, and from being in immediate view of the ballots both when cast and counted. The evidence to this effect is overwhelming. The numerous discrepancies between the numbers of registration certificates and the numbers set against such certificates on the poll-list, and the advantage persistently taken by election commissioners to the prejudice of innocent voters, the rejection of voters in a given ward, under the pretext that they should vote in their own ward, wherein no polls having been established they asked to exercise their rights at the nearest accessible box; the facility with which whites were enabled to register and vote and obstacles were imposed to defraud the blacks; the studied absence of all official notice of points to register and vote, and the clandestine knowledge of the democrats of such points, apparent in every instance; the removal of polls to secret points even after tardy notice of their location elsewhere, such as log-cabins and fodder houses in thickets, and the employment of every sort of devious subterfuge and oral threat, disclose a gigantic conspiracy to apologize for which is to be accessory thereto.

A few of numerous evidences in support of these charges are submitted for greater convenience in the appendix hereto annexed, (Document A.) Certified copies of the affidavits upon which this synopsis is based are likewise presented, (Document B.) An ample view of the case is given in a careful compilation, made at the instance of the State central committee, of affidavits of United States supervisors and aggrieved citizens of the parishes of Caddo, Rapides, Natchitoches, East Baton Rouge, Saint Mary, Bossier, Plaquemines, Point Coupée, Madison, Grant, Jefferson, Jackson, Saint Landry, Livingston, Lafourche, Webster, Terrebonne, Catahoula, Winn, West Baton Rouge, Union, Claiborne, Saint Helena, Saint Tammany, Saint Martin, Iberia, Saint James, and Orleans, lodged in the circuit court, (Document C,) also submited herewith, as also a tabulated statement of the registration of white and colored voters for the year 1872, (Document D,) and the election law of 1870, (Document E.)

The struggle, if properly understood, is one between the upholders of law and order on one side, and those who, rather than find themselves and their partisans fail of gaining political supremacy in this State, prefer any state of lawlessness, with a view of accomplishing some sort of an arrangement which will give them a portion of political power. There is in the opposition to law and legitimate proceeding a deep purpose to indirectly strike down negro suffrage, and this purpose has been sought to be reached by a combination between the avowed haters of colored suffrage and Governor Warmoth, who, through aspirations of his own, lent himself as a willing tool to, in effect, disfranchise those whom every principle of gratitude and justice should have led him earnestly to protect. When, therefore, the so-styled committee of citizens state that they represent the large preponderance of the moral worth, intelligence, and wealth of New Orleans, the public may understand that the real elements which that committee represent are those white people who are opposed to the actual impartial suffrage of the colored voters.

The general election for State, parish, and municipal officers, as well as for presidential electors and members of Congress, was duly held on the first Monday in November. Prior to that election the several political organizations opposed to the republican party succeeded in effecting a fusion combination, by which they consolidated their entire power against the republican candidates. Well understanding that their combined forces were not sufficient to overcome the actual republican majority in the State in a fair election, they, although having severally denounced an alliance with Warmoth as infamy itself, they, as a combined fusion party, abandoned the denunciations of Warmoth, in which they had before so freely indulged, and entered into a combination with him, based upon an agreement that he, through the instrumentality of the election law then in force, and the power supposed to be conferred upon him by the provisions of that law, which were sufficient, as they supposed, to enable him, through the instrumentality of the returning-board, presumed to be under his control, to falsify the actual vote cast at the election, and to make up and certify to and tabulate false returns, by which the republican vote would be suppressed to such an extent as to give an apparent fusion majority, and thereby place the State under their control, they agreeing on their part to reward him by a seat in the United States Senate.

The issue was made between this fusion party and the undivided republicans, including the entire colored vote, the white republicans, and some who had heretofore acted with the democrats, and who at this election voted the republican ticket. There can be no reasonable doubt that a fair election and honest returns would have enabled the republican ticket, State and Federal, to carry the State by a majority of at least 23,000 votes. There are undisputed facts which show this. By the registration of 1872, notwithstanding thousands of colored republicans were wrongfully refused registration, the registration-books, outside of the parish of Orleans, show 74,000 colored voters and 45,000 white voters, leaving the republican majority in the country parishes 29,000. The highest majority claimed in the city of New Orleans for any one candidate on the fusion ticket ranges from nine to thirteen thousand. Conceding to the fusionists the highest vote claimed by them, we have left a republican majority in the State of 16,000, if we count for the republicans only the colored votes. No reasonable man doubts that there are in the State of Louisiana at least from eight to ten thousand white voters who cast their votes for the republican nominees, so that, laying aside all returns, and deriving our information

from the registration as it actually took place, the pretense that the fusionists carried the State is shown to be too flimsy to require further comment, and the necessity to them of Warmoth's manipulation of the returns becomes very apparant. In spite, therefore, of the treachery of Warmoth to the colored people, who had elevated him to power, and of the willingness of the fusionists to avail themselves of his pliability, and in spite of his retaining unapproved until after the election a law which would have taken from him a portion of his great power to create and falsify returns, it was evident alike to democrats and republicans that the republican party had swept the State, and carried into office every candidate on their general ticket.

In order that the contemplated frauds might not be detected, written instructions were issued to each of the State supervisors, (all appointed by Warmoth from the fusion ranks,) to exclude from the count and canvass of the votes, at each of the polling-places, the Federal supervisors appointed by the court under the act of Congress, and to permit them only to take part in the count and canvass of the votes relating to representatives in Congress and presidential electors, leaving to the State commissioners of election to canvass and determine, after the canvass for Federal officers had been completed, the result of the election for State officers, without any check or supervision on the part of the United States supervisors. But the supervisors appointed by the United States court refused to be excluded; the evidence of the republican triumph was clear and permanent, and the whole scheme of contemplated fraud was threatened with defeat, unless a board of canvassers could be made who, in the exercise of the discretion given them by the State law, would reject enough republican votes to give the State to the fusionists. The effort, then, on the part of Warmoth, was to construct a board so as to carry out his scheme of fraud; the effort of the republicans was to secure the fair result of their known victory. The board of canvassers, or returning-board, as created by the State law under which the election was held, consisted of five persons—the governor, the lieutenant-governor, the secretary of state, John Lynch, and T. C. Anderson. The lieutenant-governor and T. C. Anderson being candidates, were disqualified under the statute, and therefore there were two vacancies to be filled. It was the purpose of the republicans to have these vacancies filled by men whom no inducement could swerve a hair's breadth from the honest discharge of their duty. Therefore General Longstreet, whose invincible probity is known throughout the land, and Mr. Hawkins, of equally unblemished personal character, though less widely known beyond the State, were selected.

To prevent the board from being thus constituted, Warmoth was driven to the vain attempt to displace the acting secretary of state, General F. J. Herron, who held his office by virtue of a judgment of the courts of the State, and to attempt to substitute Jack Wharton in his stead. But as he had been defeated in his efforts to exclude the Federal supervisors, so he failed in his attempt to constitute in accordance with his wishes the board of returning-officers; and the board, when the vacancies were filled, consisted of the governor, General Longstreet, Mr. Hawkins, Mr. Lynch, and the *de-facto* secretary of state, General Herron.

The governor, in conjunction with Jack Wharton, his *pseudo* secretary of state, attempted to constitute an independent board, and went through the form of electing Durant DaPonte and F. J. Hatch. Having possession of one of the three existing copies of the returns of election, War-

moth refused to act with the returning-board as created under the statute, and, ignoring the existence of Lynch, Longstreet, Hawkins, and Herron as a returning-board, and refusing, as required by the election law, to submit to them the returns in his possession, proceeded to lay those returns before Wharton, Hatch, and DaPonte. The legal returning-board at once submitted the question to the adjudication of the State court, and, on the 14th day of November, under the provisions of an act of the State upon the relation of the attorney-general, instituted proceedings wherein they charged Wharton, Hatch, and DaPonte with unlawfully pretending to act as a returning-board and with usurping and intruding into the office. They also, in a supplementary proceeding, obtained a restraining order against Wharton, Hatch, and DaPonte, restraining them severally from acting as returning-officers of election, or from in any way interfering with the lawful returning-officers, or from further usurping, or pretending to usurp or exercise, any capacity as returning-officers, or from meddling with the returns of the election. After hearing and elaborate argument, an injunction *pendente lite* to the same effect was allowed, issued, and duly served. Thus the pretenses of Wharton, Hatch, and DaPonte as returning-officers were disposed of. To this injunction, under the advice of Warmoth, they gave no heed, but continued to act as a returning-board, under his promised protection from consequences.

It is to be noticed here that the judiciary of the State had solemnly decided against the legality of Warmoth's board and in favor of the legality of the board composed of Longstreet, Lynch, &c. With characteristic audacity Warmoth sought to evade this difficulty by a resort to violence, and he forcibly ejected the judge of the eighth district court, who had rendered the decision against him, and installed another judge.

Meanwhile another issue was pressing upon Warmoth. The act of Congress of 1870 provided that where voters, otherwise qualified, were excluded from registration, and subsequently from voting, on account of race, color, or previous condition of servitude, that those votes which would have been cast by them should be deemed to have been cast. Many thousand colored voters who had thus been deprived of registration, and of their votes, and who had offered their votes, made affidavits, in accordance with the act of Congress, setting forth these facts; so that he had to dispose not only of a large republican majority on the vote actually cast, but of these thousands of votes, which, under the law, the returning-board were bound to take cognizance of, and to consider.

Warmoth was thus defying the injunction of the State court, when a bill in equity was filed by Mr. Kellogg in the circuit court of the United States.

The jurisdiction of the court rests upon the fifteenth section of the act of Congress amendatory of the act to protect all citizens in the right to vote, which provides that the circuit court shall have jurisdiction of all cases in *law or equity* arising under the amendatory and original act. The bills of equity in the two cases contain nothing but alleged grievances which are violations of rights, which are declared in these two acts. It would seem unnecessary to argue that from a violation of rights declared by statute a cause of action exists, and that whether the violation be consummated or attempted. We submit, therefore, that the statute *ex vi termini* clothes the circuit court with jurisdiction.

No resort to the Federal courts was had until the contempt and disregard of the orders of the State courts had demonstrated the inability of the State judiciary to arrest wrong and fraud. The acts of Congress of 1870

and 1871 for the enforcement of the amendments to the Constitution, impose upon all State officers charged with any official duties connected with any election a strict and honest observance in discharge of such duties. Mr. Kellogg, by his bill in equity, simply asked of the circuit court of the United States its orders and writs to prevent the consummation of a fraudulent plan intended not only to defeat his right to the governorship, but through the instrumentality and malfeasance of officers connected with the election, combined with persons pretending to act as officers without authority, to so mutilate, falsify, and destroy the evidence of the election at which he was a candidate as to impair, if not entirely deprive him of all means of establishing his title to the office to which he had been elected by any judicial proceeding at law originated after they had accomplished their purpose. The lawful returning-board is by statute of the State invested with *quasi* judicial power, and could determine whether the election in any precinct had been fair; and, if not fair and honest, or if votes had been refused on account of the race of the elector offering to deposit his ballot, could either give effect to the ballot or discard and reject the entire vote of the precinct. The law as well of the United States as of this State entitled Mr. Kellogg to demand that this discretion and large power should be exercised by the officers in whom the power was vested, free from meddling or interference by unauthorized persons.

His bill alleges that Warmoth, Wharton, Hatch, and DaPonte had entered into an unlawful combination to fraudulently act as a returning-board, and deprive him of any canvass by the officers lawfully charged with that duty; that they so acted with the intention of making a canvass that should knowingly exclude from consideration votes cast by persons of color, and exclude them on account of the race and former condition of servitude of the persons depositing; that it was their further intention to destroy all evidence relating to the election, and all evidence showing the vote, and the fact that they had excluded votes unlawfully; that they did not intend in any manner to consider the ballots of persons who had offered to vote and had been rejected on account of color or previous condition of servitude, but who had preserved under the provisions of the laws of the United States, in legal form, evidence of their offer to vote the ticket they offered to deposit in the ballot-box; and the fact that they had been refused the right to so vote, and that they had been so refused unlawfully; that if said conspirators were permitted to carry out their plans, he would be left without legal remedy or relief at law. Nothing can be clearer than his right to this relief, unless law is a mockery, and United States statutes are intended for snares. The court, after hearing evidence, and an argument continuing through nearly two weeks, participated in by as able counsel as can be found in the United States, who urged in behalf of the respondents every possible objection as well as to the form of proceeding, the nature of the relief asked, as to the jurisdiction of the court, the court, after considering for nearly a week, granted the order asked, restraining the consummation of the contemplated fraud. Against the justice and correctness of this well-considered judgment of a court of justice, presided over by an able judge, we have the unsupported statement of a traveling committee charged with a political purpose, who seem to claim weight for their *ex-parte* judgment of reversal of a judgment of a United States court, for the reason that an ex-judge of the Supreme Court has seen fit to slander a court of which he is an attorney, and to have forgotten to extend to other judges that charity and

courtesy which he can reasonably ask for himself, considering his participation in the Dred Scott decision.

We believe the court to have had jurisdiction, and shall not doubt it until the proper appellate court shall have decided against its authority.

In the second suit brought before the circuit court, the Antoine suit, the theory of the bill is the same as that of the bill of Kellogg, with this difference, that it includes the prevention of the forcible constitution of a legislature for the purpose of declaring the plaintiff not elected, and seeks by the conservatory process of the court to compel all the parties to strictly follow the statutes of Louisiana, which provide that the secretary of state (whom the supreme court had just decided to be Mr. Bovee) should transmit lists of the members elected to the general assembly to the secretary of the senate and the clerk of the house, who should from these lists make up the roll of members, and that those upon these rolls and none others should be allowed to participate in the organization of either house. The injunctions referred to in the address of Judge Campbell were confined entirely to the *organization* of the house, and were in the words of the statute of Louisiana itself, and resulted from a restraining order which was granted before the hearing on the application for the injunction, which application has been postponed at the request of the defendants.

The unfairness with which the so-called committee of citizens presented the whole subject in their address, is well illustrated by what they say as to the title of Lieutenant-Governor Pinchback to his present office. Article 53 of the constitution says:

ART. 53. In case of impeachment of the governor, his removal from office, death, refusal or inability to qualify, or to discharge the powers and duties of this office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the governor, absent or impeached, shall return or be acquitted, or the disability be removed. The general assembly may provide by law for the case of removal, impeachment, death, resignation, d sability, or refusal to qualify, of both the governor and the lieutenant-governor, declaring what officer shall act as governor; and such officer shall act accordingly until the disability be removed or for the remainder of the term.

Section 1560 of the act of 1865 says:

In case of vacancy in the office of governor, the lieutenant-governor shall be governor; in case of vacancy in the office of lieutenant-governor, the senate shall elect a president, *who shall be lieutenant-governor.*

On the death of Lieutenant-Governor Dunn, Mr. Pinchback was elected president of the senate, and thereby became lieutenant-governor under the constitution and the law. He became such by designation, and remains lieutenant-governor until his successor is duly installed, independent of his term of office as State senator. The impeachment of Governor Warmoth under the constitution of the State devolved the duties of his office upon the lieutenant-governor, and the duration of his term as acting governor so long as the impeachment continues is independent altogether of the question when his term as State senator ceases.

Another indication of the intended truth, candor, and fairness of the address of Judge Campbell and others is also to be gathered from their statement relative to the present State government, that, "*as originally organized, it (the legislature) comprised sixty-eight persons of color, most of them uneducated*, with a small minority of whites."

There can be no honest explanation for so gross a misstatement concerning a legislative body holding open public session in the city of New Orleans days before that committee left for Washington. The

truth is, that in the house of representatives, composed of one hundred and seven members, there are but forty-six persons of color, many of whom it is difficult to distinguish from white persons by their appearance, and most of whom are well educated. In the senate, composed of thirty-six members, but ten have colored blood in their veins.

Considering the admitted fact that there is a majority of colored electors in the State, a complaint from them that they have not an equal share of representation would have in it much more truth and justice than the statement the "Campbell committee" have asked the public to believe.

It is also alleged in the same address "that the credit of the State has been given to speculating corporations for personal aims." We ask that committee to name a single person who is a recipient or beneficiary of any such legislation or corporation so created, who is not an active member of the fusion party now arrayed against the republican party, and contributing funds to aid in giving circulation to slander and misrepresentation directed against the present State government.

We doubt whether any litigation has ever been conducted with more decorum and a more careful regard for the rights of all parties than the suits in the United States circuit court, to which reference has been made. That a most gigantic system of frauds has been interrupted, and the political complexion of the State changed by the action of the State courts in the first instance, which change has been sustained by the Federal courts, is true, but we believe that the legal mind of the country, when the facts of the case are properly understood, will unanimously be of the opinion that this change has been effected in accordance with a strict observance of the provisions of law, and that, unless these great frauds had been thwarted, the whole object of the enforcement act would have been defeated so far as one State is concerned. It would be idle for the Constitution and the laws of Congress to clothe the colored race with the right of suffrage, and guarantee it to them, unless, at the same time, they should make it the duty of the United States courts to enforce these provisions. Unless the court had the power which it assumed here, the whole acts of Congress, so far as they seek to protect all persons in their right to vote, are nugatory.

The board of canvassers consisted of General Longstreet and Messrs. Hawkins, Lynch, and Bovee, the latter adjudged secretary of state by the supreme court since the commencement of the suit. We hazard nothing in stating that this board of canvassers, in personal integrity, in caution, and a most painstaking regard for the rights of all, are beyond reproach. The allegation made in the address of Judge Campbell that they were possessed of no returns, is utterly mistaken. Warmoth having refused to obey the law of the State, and the injunction of the State court, by placing the set of returns in his possession in the hands of the returning-officers, the board of returning-officers availed themselves of the next best evidence, taking the duplicate returns which were in their own hands, acting in this respect in full accord with a decision of the supreme court of the State.

The fairness with which this board has acted is abundantly shown by the indiscriminate political character of the men whom they have returned as elected to the various offices. We will take, for example, the parish of Orleans. Of upward of sixty officers, more than two-thirds, and those by far the most important, including the mayor, six out of the seven city administrators, the two sheiffs, and six out of the eight district judges, are fusionists, and in the only exceptions named where republicans have been returned, the fusion vote was divided.

The general fact is, that notwithstanding a strong determination on the part of the reactionists, in combination with Governor Warmoth, to regain power in this State, they have been defeated at the polls, and subsequently in the canvass, and the republican government has been installed. The question is no longer an open one, so far as the courts are concerned. The supreme court of the State has recognized the government; the district, parish, and justices' courts throughout the State have organized under it. The clerks of the courts and the sheriffs are acting under it. The mayor and city administrators have recognized it, and asked and received their commissions from it. Not only are the advocates of impartial suffrage committed to a government thus established, but every citizen who desires the financial prosperity of the State must see the folly of keeping alive an opposition which, the more the subject is investigated, will be found to be the more groundless. The rhetoric of committees will weigh but little against the stubborn facts. The government now in operation in Louisiana is the government which resulted from a vote of the people under circumstances where every opportunity to defraud was open to our political opponents. It has been established in accordance with the wishes and votes of a great majority of the citizens of this commonwealth. It has been established by a course of procedure in the State courts which should have been conclusive, and would have been conclusive to any person not having the reckless disregard of law which has habitually characterized Governor Warmoth. So far as the aid of the United States circuit court has been rendered by its conservatory processes, it has acted in entire conformity to the spirit and letter of the statutes. It undoubtedly provokes the hostility of the former masters of former slaves, that a government should exist in their midst which rests very largely upon the votes of these former slaves, but these former slaves are now citizens, and, as citizens, under the laws and constitution of the United States as well as of the State of Louisiana, they have voted, and this government is the result of their votes. The hostility to it is the hostility to the suffrage of the colored man, and nothing but a practical disfranchisement of the colored man will satisfy this hostility.

We respectfully submit that the State government is now in existence, made by a board of canvassers whose legal right to canvass the vote of the State is vindicated by the judgment of both State and Federal courts, without which vindication it had undoubted and unquestionable authority. That the canvass has been fairly made; that the courts are open to all persons who believe themselves to be injured; that the legislature, duly elected, has been in session during several weeks, nothing to interrupt or interfere with the quiet and peace of the State but the intrigues of designing men, who can only claim to cause disturbance and disquiet in the interest of disappointed and defeated candidates, in whose interest they seem willing to indulge in unlimited misrepresentations, and provoke revolution, riot, and disorder. With as much propriety could the candidates of the liberal party at the late election in Massachusetts ask Congress or the Executive to overthrow the present government of that State. In fact, take away the opposition to negro suffrage in this State and the real basis and motive for opposition to the lawful government of Louisiana would cease.

We submit with all confidence, therefore, to the people of the United States that the action of the republican party of the State of Louisiana in the selection of their candidates, in the mode of conducting their

canvass, and the action of the courts in the way in which the results of the election have been fairly reached, challenge, and in the end will receive, the commendation of all good men.

JOHN RAY,
On behalf of the Republican State Central Executive Committee of Louisiana.
M. F. BONZANO,
Chairman Presidential Electors of Louisiana.
G. CASANAVE,
Member of the National Republican Committee, and in behalf of colored voters of Louisiana.

NEW ORLEANS, *January* 6, 1873.

APPENDIX.

DOCUMENT A.

EAST BATON ROUGE.

Gilbert M. Husted, United States supervisor fifth precinct, deposes that when the Port Hudson polls closed he and the commissioner, McKittrick, started in a buggy with the box for the court-house at Baton Rouge. About eight miles from Port Hudson they were stopped by a party of ten men, who shot across the road ahead of them, and called for McKittrick, who alighted, leaving the box undisturbed under the seat, and was away about five minutes. Hurst, the liberal candidate for sheriff, was one of the party of ten. On returning, McKittrick took the box, remarking he would stay there all night. Husted, replying it was his duty, as United States supervisor, to remain with the box, tried to follow McKittrick, when the party of men stepped between and debarred him. Fifteen minutes later McKittrick returned with the box, stating he had changed his mind and would go on. He went on with Husted, followed by three or four men till within a mile and a half of Baton Rouge, when they turned around and went back. Husted and McKittrick reached town about 12.30 at night. The box was so sealed that it could be opened with evidence of tampering. Husted kept a tally at the polls of the votes, to wit: 39 liberals and 166 republicans; the count returned 34 liberal majority. He marked his own ballot so as to identify it, but it did not come out of the box at the counting.

O. H. Foreman, United States supervisor Ward 7, poll 1, of same parish, says two boxes were opened, one for those voting under Brady's registration, and the other for voters under the 1870 registration and under enforcement-act affidavits. Seventy affidavits with ballots were rejected, although demands for registration had been made. The registrar closed one day at 3 p. m., while forty or fifty men were waiting for certificates. The box was so sealed that it could be opened—key-hole not covered. The commissioners drove off so fast with it to Baton Rouge that Foreman could not keep up with them; has not seen the box since. One hundred and eighty-six votes were cast in one box, of which 65 were republican, and 10 in the other, but the count gave but 29 republican votes. Howlson, commissioner, and Dr. Gardiner had each a roll of counterfeit republican tickets, and said: "We voted 25 or 30 of these on you to-day."

Charles G. Pages, United States supervisor Ward 4, in same parish, relates that the slip of paper pasted nearly straight over the lock of the box was "not so straight" when it reached the court-house. He demanded of Commissioner Cheatham to be permitted to go with the box, but Cheatham jumped into his buggy and drove hard toward Baton Rouge. Pages kept up until three or four miles on, when five or six men closed in between Cheatham and Pages, delaying the latter until the box was concealed from him. He reached Baton Rouge five hours before Cheatham appeared. Where the box had been he does not know. A serious discrepancy between the votes as cast and as counted.

PARISH OF NATCHITOCHES.

United States Supervisor Redmond deposes that public notice had been given that the Fifth-ward polls would be opened at Benlah Church, but he finally found the box at 12 m., in a fodder-house in the middle of a field, three miles from Benlah Church. Democrats gathered about Benlah Church all day and informed their friends in whispers as they arrived, to take a certain road. Redmond finally followed with one hundred and twelve colored and white republicans and found the box. The democrats, by crowding, deterred colored men from voting, and two or three white men were admitted to one colored. Six colored men, although duly registered, were not allowed to vote; reason given, names not upon the books. Many other colored men lost their votes for the reasons that the numbers of their registration papers did not correspond with their numbers on the poll-list. Redmond did not dare to remain by the box after most of the republican voters left. He was not permitted to scrutinize the count of his own box. He knows that not less than one hundred republican votes were cast therein, yet fifty-seven only were returned.

United States Supervisor John G. Lewis, of the same parish, testifies that State Supervisor Pierson refused to register one hundred colored men at Natchitoches because they were Kellogg men, and when they had followed him to Cloutierville he registered all the whites, and then said he was out of blanks. He was ejected from Charleville's store (where he had secreted blanks) by Charleville for his rascality. At Challas, although not a registration point, he registered forty-five whites and one black. He was not in the habit of keeping his office open during official hours. Lewis was at Blacklake, Ward 2, on election day, and presents a list of names of one hundred and eighty-eight republicans who were not permitted to vote, more than half of the number for the reason that they were registered in the Fourth ward, where, however, no poll was opened, and the residue for the reason that the number on the poll-list and the registration certificates did not correspond. The whites of Ward 4 were all voted. But five boxes were allotted to the entire parish, although the registrar intended to have twelve, had the republicans not become united. Many colored men were unable to vote because of the distance to be traveled; this, Lewis believes, was understood by the registrar. He saw ballots cast by candle-light before the hour for opening the polls, 6 a. m. Lewis, on exhibiting his commission, was not allowed in the room where the counting proceeded, but was told to remain outside. He saw, however, ballots stuffed into the box by means of a stick. The State supervisor threatened to cane any United States supervisor who made a report against him. The republican majority should be, at this box, about two hundred, yet the returns were four hundred democratic majority.

Edward Ezernachs, United States supervisor in the same parish, corroborates at length the statement of Redmond, and adds that he dared not remain with his box during the night. He was compelled to stand outside the room where the counting was done and look through a window, although United States Supervisor Simmons, democrat, was inside. He knows that democratic names were read off republican tickets. Not less than one hundred and fifty republicans were defrauded of their votes. Sought information as United States supervisor the night before election of State Supervisor Pierson where the box would be; he replied he "Did not know himself, nor care a damn where."

PARISH OF CADDO.

William McKenna, United States supervisor in Caddo Parish, deposes that the box, poll 8, was opened an hour and a half after the time prescribed by law. No official notice where the polls were to be located was published till the morning prior to the election; yet a general impression prevailed that the democrats knew in advance of such notice, and were sanguine the returns would be in their interest.

Dr. Joseph Taylor, republican presidential elector, and now residing at Shreveport, Caddo Parish, declares that several hundred colored voters were intentionally prevented voting by the refusal of State Supervisor Hatch to give notice where the polls would be open, despite repeated demands upon him to publish such notice. He believes the Mooringsport box was stuffed; two hundred swore they voted the republican ticket, yet eighteen republican tickets were counted.

Fletcher S. Le Girdy, United States supervisor in same parish, deposes that at Mooringsport, on the day of election, he exhibited his commission to Supervisor Hecox, who refused to recognize his authority and forcibly ejected him outside the room where the box was. Le Girdy then took his station outside, by a window, and began to tally,

when State Commissioner Noland said: "Hecox, this damned nigger has got his book and is taking down the names and numbers of the voters." He gives the names of democrats who, by threats, strove to drive him away, and afterwards crowded the people on him; he held his ground until Hecox ordered him away abusively. A United States soldier who had been called for in the morning, came up at the instance of Deputy Marshal Davis, and stood near. Quiet returned. At the close of the election Le Girdy asked Hecox to let him see the box sealed, and was refused, even after Marshal Davis joined in the demand for him; he was not permitted to stay with the box, and as the squad of soldiers had then left, he, not daring to stay there, followed them. Half a mile on a crowd of men rode by and around them, cursing and threatening violence, and "to run them off that night." This crowd would get into the bush and ride ahead, and then wait and get behind. One pistol-shot was fired. Le Girdy gives the names of four of them, all democrats. The sergeant of the squad threatened a volley if the crowd did not retire; the pursuit was continued for three miles. When the box arrived and was counted at Shreveport, the next day, there were but seventeen or eighteen republican votes, although Le Girdy had distributed and seen cast in that very box one hundred and ten republican tickets, and took a tally of four hundred and four voters, of whom three hundred and ten were colored. He is satisfied that the box was tampered with.

POINTE COUPEE PARISH.

United States Supervisor Randall McGown, Third ward, declares that several colored men, on presenting their registration papers, were not permitted to vote, the commissioner claiming the right to determine whether voters appeared to be of competent age. When the election closed, the box was not taken to the court-house but to Cayle's. He was not permitted to enter Cayle's house, but told to stay on the porch. He demanded to see the box, and was told it was on the piano inside. Soon after scratched a match and saw Coyle bringing the box into the room, and setting it, the box, on the piano. Harris, liberal candidate, was somewhere inside the house. McGown feared his tampering with the box. Soon after I followed, on horseback, the commissioners, who were in a covered carriage with the box. When the box reached the court-house I was not allowed to enter the room with it; demanded admission and was refused. No counterfeit republican tickets were cast in the box, but at the counting about sixty of them came out. Many of the tickets taken out were folded in bundles. Between one hundred and forty and one hundred and fifty tickets were cast for Grant, yet only eighteen or nineteen counted. All the other republican candidates lost to the same extent. Hartford, republican candidate for justice of the peace, had all his tickets written in pencil, but at the count they were written over in ink with another name. McGown saw twenty-five or thirty men refused registration, on the ground that the blanks were exhausted, yet, within fifteen minutes after, white people were registered.

Oscar Jaffrion, United States supervisor in same parish, declares that the State supervisor refused to admit him to the room where the box had been delivered at the close of the election. The constable threatened his person for insisting upon admission. He is satisfied the box was stuffed; it was not sealed. There were fourteen United States supervisors in the parish, but in the strongest republican quarters of the parish there was but one box for two polls. Where there was no United States supervisors the votes were all liberal votes.

DOCUMENT B.

PARISH OF RAPIDES.

R. A. Hunter, a prominent citizen and democrat, of Rapides Parish, and serving in the late election as United States supervisor there, reports to the chief supervisor as follows:

RAPIDES PARISH, LOUISIANA, *November* 7, 1872.

SIR: As one of the supervisors of election for the parish of Rapides, appointed by the United States court for the district of Louisiana, it becomes my duty, under section 7 of the act of the Congress of the United States, entitled "An act to amend an act approved May 31, 1870, entitled 'An act to enforce the rights of citizens of the United

States to vote in the several States of this Union, and for other purposes,'" approved February 28, 1871, to make to you the following report:

I was in attendance on the 4th instant at the election precinct in this parish, known as the Pineville precinct. I have nothing special to report relative to the proceedings of that precinct, excepting the refusal of the commissioner to receive the votes of those citizens who had not been registered and received their proper certificates thereof, as required by the election laws of Louisiana. This class of voters, in number exceeding two hundred, presented themselves at the said precinct, and made demand of the commissioners, in my presence, to receive their ballots in the form, and in strict accordance with their rights as defined in the section third of the act of Congress, entitled "An act to enforce the right of citizens of this Union, and for other purposes," approved May 31, 1870. All this class of legal voters were rejected at the said precinct, and I affixed my official signature, testifying to the fact of their said demand and rejection to each of these certificates, attaching thereto also the tickets they proposed to vote, as required by the act above referred to. In mitigation of the wrongful acts of these commissioners, in violation of the law, I feel it right to say that the registrar, J. G. P. Hooe, gave them peremptory orders in my presence *not to receive* the vote of any person presenting himself as a voter, unless they exhibited a certificate of registration with his signature attached thereto.

I further report that on the morning of the 5th instant I was informed that the said supervisor of registration, J. G. P. Hooe, intended to canvass and count the votes polled on the 4th instant, in this parish, at the hotel of which he is the proprietor, in Alexandria, and not at the court-house, where, in my opinion, it was his duty under the law to keep his office. I therefore went to said hotel, and after some difficulty ascertained that he was located in room No. 21 of said hotel, the door of which I found closed and locked; and on my demand, in the name and by authority of the United States, in virtue of my commission as supervisor of election, to be permitted to enter therein, the said Hooe unlocked the door and asked me what was my object and purpose, when I informed him that it was my wish and purpose to discharge the duty imposed upon me by section 5 of the act of the Congress of the United States, approved February 28, 1871, to wit: "To supervise the counting and canvass of all of the votes polled in the parish on the 4th instant." He replied that "he would not admit me for any such purpose, but that I would be permitted to be present when he opened the box and counted the votes cast at the precinct where I was present in person on the day of election, but that he would not permit any interference with his rights under the laws of Louisiana, nor did he intend to recognize any authority in any one to interfere with him in counting and canvassing the votes." I stated to him "that I claimed the right to remain with the ballot-boxes until every vote cast in the parish had been counted and the certificates made out, and that I could not and would not submit to his curtailment and limitation of my rights and duties under the law." And as he still persisted in his refusal to admit me into his room upon the conditions demanded by me, I left the premises, and I am not therefore enabled to report how the canvassing of the votes polled in this parish was conducted, as you will perceive from the above statements. My inability to make the report which by law I am required to do, on this branch of the duties of a supervisor of elections, arise, not from any indisposition on my part to perform my duty, but because I was resisted and opposed by the said supervisor of registration, in the attempt made by me to discharge the functions devolved upon me under the laws of the United States. In this connection I will further state that for more than forty years I have taken an active part in the political contests in this State, and this is the only election that has ever been held, to my knowledge, (except perhaps during the war,) in which all of the commissioners to hold the election were selected from one political party, and this is the only instance within my recollection in which the votes polled at an election were counted in a private room with doors locked. I also feel it my duty to say that all the complaints of partiality and unfairness in conducting the registration of voters are made by persons adhering to the republican party, and that these complaints, from my own observation and knowledge, are well founded, and that there is abundant evidence accessible to substantiate these allegations. The aggregate republican vote of this parish will, in my opinion, fall short fully one-third by the return of the numbers they could have polled and the eagerness with which those who had failed in obtaining their registration papers pressed their rights to vote without them on the day of election, indicated clearly to me that it was not their fault that the provisions of the law of Louisiana had not been complied with relative to registration of voters.

Personally, I belong to that political party who are termed "last-ditch democrats." I have never voted any other ticket than the straight-out democratic ticket, excepting that at the late election I voted the entire "fusion" State ticket without a scratch, and the Charles O'Connor electoral ticket. But my political faith teaches me that all men are entitled to their civil and political rights as defined by law, and that it is the duty of every good citizen to oppose and denounce any attempt to deprive the people of the right of suffrage given them by law, by wicked and unscrupulous partisans

who would prostitute and pollute the ballot-box to accomplish their selfish and corrupt purposes.

Very respectfully, your obedient servant,

R. A. HUNTER,
Supervisor of Elections for the Parish of Rapides.

F. A. WOOLFLEY,
United States Chief Supervisor of Elections for the District of Louisiana.

Sworn to and subscribed before me this 7th day of November, 1872.

CHARLES OWEN,
Deputy Clerk, Ninth Judicial District Court.

DISTRICT OF LOUISIANA, *ss:*

I certify the foregoing to be a true and correct copy of the report of R. A. Hunter, supervisor of election, parish of Rapides, Louisiana, from the original thereof.

New Orleans, January 6, 1873.

[SEAL.]

F. A. WOOLFLEY,
United States Commissioner,
Chief Supervisor of Elections, District of Louisiana.

CADDO PARISH.

William H. McKenna, of the parish of Caddo, Louisiana, being duly sworn, deposes and says: I was a United States supervisor on the day of election, November 4, 1872, in Caddo Parish. I was at poll No. 8; the box was opened about half past 7 o'clock in the morning, an hour and a half after the time when it should have been opened by law * * * The points at which the polls were to be opened were not published until Sunday morning the day before the election in the Shreveport Southwestern. I suppose the object of this was to confuse the republicans so that they would not know where to go in order to vote. There seemed to be a general impression that the democrats knew where the polls would be held, and they seemed to be sanguine that the election returns would be in their favor or interest.

WM. McKENNA.

DISTRICT OF LOUISIANA, *ss:*

I certify the foregoing to be a true and correct copy of the deposition of Wm. McKenna, taken before me in the matter of "Reports of United States supervisors of election, parish of Caddo, Louisiana."

New Orleans, January 6, 1873.

[SEAL]

F. A. WOOLFLEY,
United States Commissioner, Chief Supervisor of Elections, District of Louisiana.

NATCHITOCHES PARISH.

W. H. Redmond, of the parish of Natchitoches, being duly sworn, deposes and says: I was a United States supervisor on the day of election, November 4, 1872, in Natchitoches Parish. The ballot-box was to be Bulah Church, Fifth ward, which had heretofore been the regular polling-place, but I found it in a fodder-house in the middle of a field, half filled with fodder, over which the voters had to pass. * * * * * * * It was 12 o'clock in the day when I found the box in the field. We stopped at Bulah Church, thinking the box would be there, and found thirty or forty white men standing about there, but none of them seemed to know where the box was. They crowded up together and whispered to each other that they would all take a certain road, and were gone as if they were going home. The road they took led to where the box was. There is no name for that road. The box was about three miles from Bulah Church. They had been going off from early morning, and we followed them when they left in a body at 12 o'clock—myself and the other United States supervisor, Edward Erzernac—and when we arrived, there were about one hundred and twelve colored and white men, all mixed up together, following on behind us. The greater number of these men were colored. When we arrived there we stopped at the gate, and, as I saw no road leading in, I thought I would go through. After arriving in the field, I saw two or three little log-cabins with a good many men gathered around them, so I concluded that the box was there. I went into one of these log-cabins and found the box. * * * * * No notice had been given that this place would be the place where the poll would be opened. The State supervisor of election had told Henry Raymond, a United States supervisor of election, and M. P. Blackstone, John J. Lewis, and myself, all United States supervisors, that there would be five boxes in the parish, and that one would be at Bulah Church, in the Fifth ward. There were six colored men refused the right to vote after having been duly registered. They exhibited their registration papers, and demanded

the right to vote, but the commissioners of election said that their names could not be found upon the books. * * * * * * * There was considerable crowding about the polls to deter the colored men from voting.

The white men came in at one door and the colored men at another. Two or three white men were admitted to vote for one colored man: otherwise the election went off properly during the day.

The great trouble was in the numbers of the registration papers being different on the papers from those on the poll-list, and a great many were debarred from voting on that account. The colored men as soon as they voted went off, and when the poll closed there being only twelve or thirteen colored men present, and the poll being near the woods, I did not deem it safe to remain with the box. * * *

I was not permitted to examine the count of my own box or any other box, and therefore cannot vouch for the correctness of the count. One hundred and twelve men went up to the box with us, and out of these one hundred and twelve republicans I know there must have been one hundred that voted the republican ticket—both white and black—yet when the votes were counted only fifty-seven republican votes were returned. As United States supervisor, I know that republican votes should have been not less than one hundred and fifty or one hundred and sixty returned. Great dissatisfaction prevails among the colored people who voted at this poll. Some of them came twenty-five miles to cast their ballots and were unable to do so. I myself had to come twenty-five miles.

W. H. REDMOND.

DISTRICT OF LOUISIANA, ss:

I certify the foregoing to be a true and correct copy of the deposition of W. H. Redmond, taken before me, in the matter of "Reports of United States supervisors of election, parish of Natchitoches, Louisiana."

New Orleans, January 6, 1873.

[SEAL.] F. A. WOOLFLEY,

United States Commissioner, Chief Supervisor of Elections, District of Louisiana.

NATCHITOCHES PARISH.

John G. Lewis, of the parish of Natchitoches, being duly sworn, deposes and says: I was a United States supervisor on the day of election, November 4, 1872. I was appointed on the 23d of October and qualified on the first day of November. I proceeded at once to my official duty in the town of Natchitoches, where the registration of voters was then proceeding. When the registration first opened, the State registrar, E. L. Pierson, seemed to be cramped; that is, he did not seem as if he could discharge the duties of his office. I went and offered my assistance to him in assisting to register the voters, in order that he might have them all registered, but he replied that he was not allowed to have any assistant but one, as the law required, and that he had his orders from the governor. That same day men came and informed me that they were slighted in the registrar's office, for the reason that they were Kellogg men, and they were so charged by the supervisor himself, E. L. Pierson. They then applied to me, as I was teaching school at the time, and wished me or Mr. Blunt, State senator, to see if we could get them through. Mr. Blunt went, upon their application, and I followed at 12 o'clock, and again offered my services to the registrar, which was again refused, for the same reasons. I suppose there were one hundred men came to me at different periods and asked me to try and get them registered. He remained at that point of the parish for two weeks. After leaving there he went to a place known as Clontierville. I went down shortly after, while he was there. He left on Monday and we started on Thursday, four days later. We came there on a political campaign. He then commenced hauling and pulling the colored men, for the reason that they held up and demanded their registration papers. They advocated their claims and the necessity of their being registered. After registering all the white men there he said that he was out of blanks. Before he was out of blanks he was registering in Mr. Charleville's store, and on account of his rascality Mr. Charleville told him that he could not register in his store any more: that he must register somewhere else. He had been secreting the registration blanks in the store. Mr. Charleville's words were these: "That he would not allow any such d——d rascality in his store." He then went from Clontierville to Mr. Challas's, about eighteen miles distant. I followed him there. He arrived there on Saturday and we arrived on Monday, two days later. He there registered forty-five white voters and *one* colored voter. It was not a registration point. At this place the colored people were denied the right of registration, the greater part of them, and frequent appeals were made to me to assist them in getting registered. I remonstrated with the State registrar, and his answer was that he would register every person, but he failed to do it. He was not prompt in keeping his office open during the regular official hours. On the day of election I was at Blacklake, Ward No. 2, and remained there the better portion of the day. The election was peaceable. There were attempts made to deprive the

colored voters of their right to vote. I have a list of those men who were denied the right to vote for the reason that they were registered in another ward, but there was no box or polling-place in the ward where they were registered. They are in number one hundred and eighty-eight, and their names are as follows, accompanied by my certificate:

1. Alstalk.
2. Allen, William.
3. Anderson, Dave.
4. Alfred, Samuel.
5. Abram, James.
6. Abram, Benjamin.
7. Amos, John.
8. Anderson, Israel.
9. Booker, George.
10. Babers, Boston.
11. Bly, Jim.
12. Barker, Bill.
13. Browder, Dick.
14. Blakely, James.
15. Berry, Greene.
16. Chiles, Daniel.
17. Chiles, Rand.
18. Compton, Jefferson.
19. Chatigne, Narber.
20. Craig, Crawford.
21. Coser, William.
22. Collins, Peter.
23. Chatman, Edward.
24. Colefield, Robert.
25. Chism, John.
26. Clark, Henry.
27. Coates, Jerry.
28. Douglass, Willis.
29. Damas, Levi.
30. Andrew, Lewis.
31. Davison, Victor.
32. Dandridge, Edward.
33. Dias, Calvin.
34. Derbon, Joseph.
35. Doytoland, Joseph.
36. Dias, Max.
37. Cholegnier, W.
38. Edward Abram.
39. Eden, Alfred.
40. Ellis, Richard.
41. Franklin, Alexander.
42. Frazier, Anderson.
43. Farley, Joseph.
44. Farley, Joseph.
45. Frythe, Patterson.
46. Fallow, Anderson.
47. Frazier, Mac.
48. Foet, John.
49. Fontenot, Gus.
50. Greene, Lie.
51. Greene, George W.
52. George, Henry.
53. Gaskin, Henry.
54. Groves, John.
55. Hardy, Prince.
56. Harris, Jake.
57. Hill, William.
58. Hamilton, Jim.
59. Holmes, Robert.
60. Hector, William.
61. Hawthorn, Alfred.
62. Horton, Francis.
63. Hall, A. J.
64. Hatcher, Senicoe.
65. Hardeman, Charles.
66. Hall, A. Jack
67. Jackson, Anderson.
68. Joiner, McHenry.
69. Jaineyson, George.
70. Johnson, Samuel.
71. Jones, Laboone.
72. Jenkins, Roleen.
73. Jackson, Andrew.
74. Johnston, Charles.
75. Johnston, Sandy.
76. Jerkins, Robert.
77. Johnston, Bryard.
78. Jackston, Andrew.
79. Lebron, Lewis.
80. Louis, Jo.
81. Morgan, Ben.
82. Mickle, J.
83. Moore, Allen.
84. Morse, William.
85. Mitchell, Claiborne.
86. Mithcell, Ed.
87. Mooney, S.
88. Morse, John.
89. Matimes, John.
90. Meizier, Ed.
91. Meizier, H. V.
92. Meizier, Tunas.
93. Moore, Calvin.
94. Mooney, Pat.
95. Owens, Amos.
96. Provost, Julian.
97. Porter, Lewis.
98. Perot, Augustin.
99. Prestelle, Mat.
100 Pecak, Alfred.
101. Parker, John.
102. Piene, Peter.
103. Prostelle, March.
104. Posser, Witty.
105. Penticost, Richmond.
106. Russell, Levi.
107. Revers, Paul.
108. Rileford, Anthony.
109. Loyd, Courier.
110. Wilifred, Dock.
111. Reese, Joe. E.
112. Robinson, Argyle.
113. Redderford, Wallace.
114. Rauche, Thomas.
115. Rutherford, Wm.
116. Rivers, Louis.
117. Livial, Abram.
118. Sanchez, L.
119. Spero, Green.
120. Southerland, Robert.
121. Simms, Hubbard.
122. Stewart, Harry.
123. Silvie, James.
124. Stewart, Tony.
125. Sillers, William.
126. Silvie, Benjamin.
127. Smith, Amos.
128. Smith, James.
129. McClenden, A.
130. Stephen, Moses.
131. Taylor, Rafrra.
132. Thomas, Boston.
133. Thomas, Alex.
134. Trichel, Alex.
135. Taylor, Farmer.
136. Taylor, Adolphe.
137. Taylor, Andrew.
138. Taylor, Armstead
139. Thomas, Ed.
140. Taylor, Jake.
141. Thomas, Ike.
142. Turner, Samuel.
143. Thomas, Peter.
144. Lebnon, Tousant.
145. Lebnon, Evariste.
146. Thomas, Afr.
147. Thomas, John.
148. Toddleton, Albert.
149. Taylor, Carey.
150. Vincent, Richard.
151. Weber, Henry.
152. William, Dan.
153. Watson, William.
154. Wilson, George.
155. Wooten, Louis.
156. Weber, William.
157. Warmsley, John.
158. Watson, John.
159. Woods, Alt.
160. Warmsley, Jesse.
161. Williams, Harry.
162. Williams, Samuel.
163. Williams, Richard.
164. Wilson, Russel.
165. Wilson, William.
166. Wilson, John.
167. Washington, Jno.
168. Wash, John.
169. Williams, E.
170. Weber, Saml.
171. Gorncie, Henry.
172. Prostille, Louis.
173. William Rudd.
174. James Holland.
175. Wilson Danderfield.
176. Louis A. Brown, (refused.)
177. Wm. Lawton.
178. Frank Butler.
179. Jacob Turner.
180. Henry Harrison.
181. Wm. Woodfork.
182. Edward Greene.
183. Harry Owens.
184. Louis, Joseph.
185. Jas. Alfred.
186. Peter Conde.
187. Isaac Alforde.
188. Hector Smith.

I hereby certify that the above named were noted down by me after my expulsion from the poll and box situated in Ward No. 2, and that more than one-half of the above

were refused the privilege of voting because they lived in another ward other than the one at which the box was placed.

JNO. G. LEWIS,
United States Supervisor of Election.

The voters formed in line in front of the polls on the day of election. There was a preference shown to white men as they came up to vote. A preference was shown to political friends for the reason that the white men out of the Fourth ward were permitted to vote in this ward, No. 2, whereas the colored men who belonged to the same ward were not allowed to vote at the same ward, No. 2. The State registrar said that he would have five boxes in the parish and that he had intended to have twelve, but that since the republican party had united he was going to put the boxes where he pleased. A great many colored men were disabled from voting in consequence of the distance they had to travel and the state of the weather. This small number of boxes for the voters of the parish, I have a right to believe, was for the purpose of keeping the colored men from voting with facility. It was almost the general rule that the number on the registration paper did not correspond with the number set against the name on the poll-book or list, and in consequence a great many votes were rejected. I suppose the better half of these one hundred and eighty-eight, whose names are already given, were rejected for that reason. The State supervisor of registration was not present at the polls. When the election closed the box did not come into the town of Natchitoches or the mayor's office until the next day. I did not remain with the box when the election closed. When I went to the polling place and presented my commission as well as my badge, they refused to recognize my authority and I was not allowed into the room; they told me that I could stand outside if I wanted to do that. I was, however, so far removed from the box that I could not see whether any frauds were carried on in the count, but when I was at the door I saw them stuffing ballots into the box with a stick. I have a right to believe that the box was pretty well crammed, because they were voting by candle-light prior to six o'clock that morning. Six o'clock is the regular official hour for opening the boxes. When I got to the polls they had just refused one Thompson of the right to vote. I protested because they had not provided a box for the Fourth ward; that he was a voter, and all the voting was done in the one precinct. The State commissioners then said that they were sent there to govern the election and would do so. I left the polls at half-past 10 o'clock in the morning, and withdrew the colored people who had been standing around that were refused to be allowed to vote. I took down their names and took them before a United States commissioner, where, on that day and the following and subsequent days, they made affidavits that they were denied the right to vote. I did not return to the polls that day, because I had to go a distance of twenty-eight miles to see the United States commissioner. One United States supervisor remained at the polls after I left; his name is John Caughlin. Two days later I saw the box at the mayor's office at Natchitoches, where it was opened to be counted. I have no knowledge of where the box had been in the mean time. I was not present at the counting because I had been told in the morning that the mayor's office was a strictly private apartment.

I was not allowed in there to witness the counting, although I made every effort to get in; but there seemed to be a source of uneasiness among them. Prior to my going in, the State supervisor had declared that any United States supervisor who made a report about him he would cane him. I felt that intimidation was being exercised and I did not wish to imperil my person by going in. Mr. Blackstone, United States supervisor, and Mr. Tunnard, United States commissioner, were present when the counting was going on. They were white men, and I think the reason why I was not allowed entrance was because I was a colored man.

Ward No. 2 is entirely a republican section, and the majority of the votes cast has hitherto been republican. The amount of votes cast has generally been from three hundred to three hundred and fifty. The republican ticket out of these would be about two hundred and seventy-five, and the majority would be about two hundred, whereas the returns in this box at the recent election gave over four hundred of a democratic majority. Great dissatisfaction prevails among the colored people who voted at this box, at having been defrauded of their votes.

JNO. G. LEWIS.

DISTRICT OF LOUISIANA, *ss:*

I certify the foregoing to be a true and correct copy of the deposition of John G. Lewis, taken before me, in the matter of "Reports of United States supervisors of election, parish of Natchitoches, Louisiana."

New Orleans, January 6, 1873.

[SEAL.] F. A. WOOLFLEY,
United States Commissioner, Chief Supervisor of Elections, District of Louisiana.

EAST BATON ROUGE PARISH.

Gilbert M. Husted, of East Baton Rouge, being duly sworn, deposes and says: * * I was appointed United States supervisor for the fifth precinct, * * the polls being at that time at Port Hudson.

Q. You served as such?—A. Yes, sir.

* * * * * * *

In the evening, after the polls closed, I saw the commissioner that had been appointed for Baton Rouge and asked him what time he proposed to go to town. We got about (as near as I can judge) eight miles from Port Hudson when we were stopped by a party of men. They shot off ahead of us across the road, and somebody called out, "Mr. McKittrick, are you in the wagon?" He said, "Yes;" and they said, "We want to see you." He then got out of the wagon and was gone, I should judge, five minutes, the box being still under the seat; he came back and I jumped out of the wagon and asked him what was the matter; says he, "I am going to stay here all night, (at the same time taking the box from under the seat;) you can remain or go to town, just as you see fit." "You know my duty," said I; "it is to remain with the box." He then started to the side of the road and I attempted to follow him, when these parties stepped in between us. * * * * I suppose it was about fifteen minutes before McKittrick came back with the box; stated he had changed his mind, and that it was his intention to go to town, at the same time placing the box in the wagon. We started in the direction of town together, and we were followed by three or four men on horseback until we got within a mile and a half of the outside limits of the corporation, when they turned around and went back. We got into the court-house, at Baton Rouge, about half past twelve o'clock. * * * The way they sealed it (the box) was horizontally, on each end. I should judge it could have been opened * * * without leaving any evidence of having been tampered with.

Q. About what should you say would be the result from the complexion of the vote cast at that voting-place?—A. Thirty-nine liberal votes and one hundred and sixty-six republican.

Q. You kept the tally?—A. Yes, sir; I kept the tally. I believe it is here.

Q. What was the result of the counting?—A. Thirty-four liberal majority instead of one hundred and thirty-two republican majority.

Q. How could such result have been obtained?—A. No way unless the box was tampered with.

Q. Did you mark your ticket so as to identify it?—A. Yes, sir.

Q. Did you see it come out of the box?—A. No, sir; I didn't see it come out of the box.

Q. Were you present at the counting of the votes?—A. Yes, sir; and I did not see it.

GILBERT M. HUSTED.

O. H. Foreman, of East Baton Rouge, being duly sworn, deposes and says:

Question. State what position you held on the 4th of November, 1872.—Answer. I was United States supervisor at Poll No. 1, Ward No. 7, Baton Rouge. * * They had two boxes; they put all those that voted under Brady's registration in one box, and under the old registration, or on the blanks that I furnished that day, they put them in another box.

Q. That is, those votes cast under the enforcement act?—A. Yes, sir. I put them in, but they were rejected.

Q. How many were so rejected?—A. There was about seventy.

Q. On what ground?—A. That they were not registered under Mr. Brady, and that they could not vote them. I made them go two or three different times and present their old registration papers to vote, but they told them not to come there any more—that they would not allow them to vote under these papers. * * * * *

Q. Had these persons previously made a demand to be registered?—A. Yes, sir.

Q. And were refused?—A. Yes, sir; some of them refused and more of them could not get to the office. Some of them said the office closed one evening at half past 3 o'clock, and the registration officer left forty or fifty men standing there waiting to be registered. * * And after the election was over they went to seal the boxes. They tore a slip of paper about wide enough to sign the names of the commissioners, and I asked the privilege of putting my signature to the seal. That was denied unless I could show them the law. I told them I didn't practice law, but they ought to know their own business, and instead of putting it across the lid and sealing the box they got it under the padlocks, so that the box could be opened without disturbing the seal. * * The paper was not large enough to cover the key-hole. * * Sam Howelson, Charley McMann, and Daniel Denham. Sam Howelson was the one that picked up the boxes, and Harrington Howelson had them in the buggy. They passed me and drove very fast to Baton Rouge, and my horse gave out and I could not keep up with them.

Q. From the time the box left the voting-place where did you next see it?—A. I have not seen it since. * *

Q. You don't know where it was taken from the polling-place?—A. Some of the men told me it had gone on to the court-house, but I don't know whether it was the same box or not.

Q. How many votes were cast at the poll?—A. There were eighty-six cast under the Brady registration in one box, and ten in another, called the doubtful box. There were about sixty-five republican votes cast there under Brady's registration.

Q. And what did the count give?—A. They only gave us twenty-nine republican votes.

Q. It should have been sixty-five?—A. Yes, sir; from sixty to sixty-five, because I sat there and took a list of every colored man that came up. There was myself and another man to give the tickets, and I never left the tickets out of my hand at all. * *

Q. How could such a result have been effected?—A. I don't see any way unless it was done at the house where they staid three-quarters of an hour, off the public road, before they came on with the boxes.

Q. Then the box was tampered with?—A. Yes, sir, it must have been. * * After I got to the court-house, Doctor Gardner and Mr. Howelson each pulled out a roll of these counterfeit republican tickets and said, "We voted about twenty-five or thirty of these on you to-day." * * * * *

O. H. FOREMAN.

EAST BATON ROUGE PARISH.

Charles G. Pages, of East Baton Rouge, being duly sworn, deposes and says:

I was United States supervisor of election at Plains, McCartney's store, Fourth ward. * * The polls closed at about five minutes past six in the evening, and I saw the box sealed. There was a strip of paper used. The box had but one lock and the slip of paper was pasted over it, bearing the signatures of the three commissioners. I noticed that the paper was placed very nearly straight, and I noticed afterward when they got to the court-house that it was not so straight as when they placed it there.

Question. Did you follow the box from the polling-place to the court-house?—Answer. No. After they closed the polls I called Mr. Cheatham to me and told him that, as United States supervisor, I desired to go with the box. He made no reply, but walked away, and entered his buggy and drove at a very rapid rate toward Baton Rouge, taking the box in his buggy and driving at a very rapid rate. I had a very fast horse and followed them pretty close. In fact, I was right behind him all the time. I suppose we had driven about three or four miles when some five or six men on horseback closed right in between my buggy and Mr. Cheatham's, which contained the box. This set me back a little; not being acquainted with the road and not knowing where the bridges were, I had to check up a little. When we got about seven miles from the polls they had halted in front of a Mr. Liggins's store. When I left the poll, Mr. M. S. Michael, democratic United States supervisor, was in the buggy with me. I was pretty close to them when they stopped, and as soon as I stopped, Mr. Michael jumped out and went into the store. He returned in about two or three minutes, when I inquired of him where Mr. Cheatham was. He said that Cheatham had gone on and was in town, he supposed. I inquired of him how, because I was standing near their buggy. He replied, "On horseback." I then asked Mr. Michael if Mr. Cheatham had the boxes, and he answered, "Yes." Shortly after that Mr. Commissioner Ligon came out of the store, jumped in his buggy, and bid us good-night, and started off toward town. * * * I arrived at the court-house nearly five hours ahead of Mr. Cheatham and Mr. Ligon, the commissioners.

Q. Where was the box at the time you stopped at Ligon's store?—A. I do not know. It must have been in the store, because the buggy was standing there. * * *

Q. How far behind them were you?—A. Not far. They had just time to get out of the buggy and go into the store before I got up there.

Q. You did not see anything of the box?—A. No. I stood in front of the door holding my horse, and when one of the doors came open, somebody shut it quick.

Q. State the count.—A. There was a democratic majority of about sixty or sixty-five.

CHAS. G. PAGES.

DISTRICT OF LOUISIANA, *ss:*

I certify that the foregoing is a true and correct extract from the depositions of G. M. Husted, O. H. Foreman, and Charles G. Pages, taken before me in the matter of "Reports of United States supervisors of elections, parish of East Baton Rouge, Louisiana."

New Orleans, January 6, 1873.

[SEAL.] F. A. WOOLFLEY,

United States Commissioner, Chief Supervisor of Elections, District of Louisiana.

DOCUMENT C.

UNPARALLELED FRAUDS—PROVED BY THE SWORN EVIDENCE AND CONFIRMED BY FIGURES THAT DO NOT LIE.—31,869 COLORED VOTES SUPPRESSED.—THE AFFIDAVITS OVERHAULED AND THE WITNESSES BROUGHT OUT.

All sorts of frauds—frauds in the counting—ballot-boxes hidden—fraudulent registration—republicans refused registration—republicans denied a vote—ballot-boxes stuffed by wholesale—United States supervisor intimidated, shot and driven from the ballot-boxes—spurious tickets—outrageous intimidation—tricks of every conceivable kind—McEnery sent up in a balloon—a fair statement.

[Compiled for the Republican from statistics, returns, and affidavits, by John E. Leet.]

PREVIOUS ELECTIONS.

The State election in 1868, and the State election in 1870, are the only criterions of which we can fairly avail ourselves in any attempt to ascertain the approximate strength of the two parties. The late Horace Greeley proved to the satisfaction of the country that the presidential election in the fall of 1868 was a farce in Louisiana; that it was bathed in blood, and was more like a battle than a peaceful choice of rulers.

ELECTION IN 1868.

Nobody ever denied that the election in the spring of 1868, under military auspices, was fair and impartial, so far as it extended. The regular republican candidate for governor then received 64,901 votes, almost all colored. His opponent, also a republican, was supported by the bulk of the white republicans, by the democrats, and by a large number of colored republicans, but only polled 38,046 votes. Regular republican majority, 26,855. Many colored men in some parishes, and many white men in others, did not vote at this election. Total vote, 102,947.

ELECTION IN 1870.

Warmoth, who conducted this election, says it was fair. Total vote, 106,817. Dubuclet, republican candidate for treasurer, received 65,647. Blair, democrat, received 41,170. Dubuclet's majority, 24,477.

It has been charged, but never proved, that frauds were perpetrated in some of the parishes at this election, not upon democrats, but upon one class of republicans by another class, in the contests for seats in the legislature.

It has also been charged, but never proved, that in New Orleans frauds were perpetrated upon the democrats.

It has been charged and proved, on the other hand, that in at least a dozen parishes thousands of colored men were intimidated from voting. The colored population of Caddo, Bossier and Saint Landry is, according to the United States census, 36,663. Estimating one in every five as a voter, there were in these three parishes 7,332 colored voters, but the returns show that only 2,352 of them voted. The fact that over five hundred colored men were murdered in these three parishes only two years previously for trying to vote, explains why almost 5,000 of them desisted from voting in 1870. This number of intimidated voters is sufficient of itself, without going any further, to counterbalance any possible frauds committed in favor of the republicans in New Orleans. We are thus warranted in the inference that Dubuclet's majority of 24,477 is not more, but really much less, than the actual republican majority in the State would have been with a full, free, and fair election.

THE WORK TO BE DONE.

The democrats at the late election set out to overcome an established republican majority in round numbers of 25,000, consisting mainly of colored men, not 100 of whom could be induced, by fair means, either to remain away from the polls or vote the democratic ticket. No attempt was made to convert the colored voter. The whole democratic campaign was denunciative of the negro and a class appeal to the whites. The colored vote was solidly conceded to the republicans, and every effort was directed to polling the white vote for the democratic ticket.

WHAT THE CENSUS SAYS.

Just here the census intervenes and declares it would be impossible to carry the State against the colored vote on this plan, without the aid of fraud. All inaccuracies

in the last census are favorable to the whites. This is shown by a comparison with the report of 1860. Everybody supposed the devastating war had decreased the white and increased the colored population, until the recent census declared the opposite result. The truth is the secluded cabin of many a colored family in the rural districts was omitted in the enumeration, which still reports 364,210 colored to 362,035 whites in the State—a colored majority, in population, of 2,145. If we admit that one in five of the colored population is a voter, there are, according to the census, 72,482 colored voters in the State.

The same ratio of one in five would give us almost as many white voters. But there is a material difference in the two races. According to the census there are 80,975 foreigners in the State, of whom a very large proportion are men, and of nationalities who do not readily become citizens. From any estimate of the white vote at least twelve per centum must be deducted for unnaturalized foreigners. Besides this, the ratio of males is larger to the colored than it is to the white population, from the fact that previous to the war sugar and cotton planters exclusively imported male slaves from the border States. In some parishes the excess of colored men is notorious. The ratio of one in nine is therefore generally used to ascertain the legal white vote. This would make 40,229. Colored majority, 32,613.

THE WHITE REPUBLICAN VOTE.

There are no means of ascertaining the exact number of white men in the State who voted for Kellogg. In each country parish there were from fifty to five hundred. In Iberia alone it is not, cannot be denied, that upward of five hundred white men, heretofore democrats, voted for him and the entire ticket. In the city the German votes, over five thousand strong, were cast chiefly for Kellogg. Besides, there were large republican clubs of various other nationalities which supported him. The democrats charge that four thousand or five thousand place-holders and employés under the city and federal governments worked for him. On all sides it is admitted that a very large number of property-holders, merchants, and bankers voted for him. His friends claim that he received throughout the State not less than fifteen thousand white votes.

COLORED MAJORITY ACTUALLY REGISTERED.

A statement of the number of voters registered up to the day of closing the registration, taken from the books of Warmoth's democratic State supervisors by the federal supervisors of registration, which included every parish in the State except four, where the two races are about equal, shows a registered colored majority of nineteen thousand voters, if we allow a white majority of ten thousand in New Orleans, in spite of all the devices to prevent them from registering, which succeeded so signally in several parishes.

SUMMING UP.

Vote for governor in 1868:

Total vote	102,947
Regular republican	64,901
Bolters and democrats	38,046
Republican majority	26,855

Vote for treasurer in 1870:

Total vote	106,817
Republican	65,647
Democratic	41,170
Republican majority	24,477

Vote for governor in 1872, per Warmoth return:

Total vote	121,919
Democratic	65,579
Republican	55,973
Democratic majority	9,906

Vote for governor in 1872, per legal return:

Total vote	126,552
Republican	72,890
Democratic	54,027
Republican majority	18,861

THE IMMENSE COLORED VOTE SUPPRESSED.

The Warmoth return gives Kellogg only 55,973. Subtract from this the 15,000 white republicans, and this return tells us only 40,973 colored men voted for Kellogg. Subtract this 40,973 from the 72,842 colored voters in the State, and the fact comes out that this Warmoth board suppressed 31,869 colored votes.

ANY WAY YOU FIX IT.

Any shape you give the figures defeats McEnery. Admitting what nobody claims, that the white is equal to the colored vote, then the fifteen thousand white republicans transferred from McEnery to Kellogg gives the latter thirty thousand majority; the further deduction of at least ten thousand unnaturalized whites from McEnery's column swells that majority to forty thousand.

FOUR DAMNING FACTS.

Four general, undenied and undeniable facts satisfy all impartial observers that it was the democratic programme to carry the State by fraud:

1. The alliance with Warmoth. "These fingers are worth a United States senatorship" was the basis upon which "an alliance with infamy which is infamy itself" was made.

2. After the alliance the democrats protested against the signing, by Warmoth, of their own election law which they had forced through the legislature to prevent fraud.

3. Throughout the State the commissioners of election were all from one party—all democrats; an outrage unparalleled in the history of Louisiana or any other State.

4. Throughout the State the federal inspectors were driven from the presence of the ballot-boxes, and the State vote was counted in secret exclusively by democrats for the declared object of committing fraud.

STUNNER.

McEnery claims to be elected governor of Louisiana by 9,597 majority over Kellogg, by virtue of the returns declared by the Warmoth or Lyceum Hall returning-board, consisting of five persons elected by a pretended senate without a quorum. Two of those five returning-officers, S. M. Todd and O. F. Hunsaker, swear their names were forged to that return, and that they did not sign it on account of the frauds it contained. The very authority upon which McEnery rests his claim thus strikes down that claim.

A CURIOUS REVELATION.

At the election two years ago, in 1870, the democrats carried sixteen parishes by an aggregate majority of 7,363. These same sixteen parishes now give, according to the return of the Warmoth board itself, an aggregate democratic majority of only 7,101. Upon their own showing, the democratic loss on their own ground is 262 votes. This shows that the transfer of the election machinery to their hands was of no legitimate benefit to them, and was only useful as a means to fraud. It vindicated the fairness of the republican victory two years ago. It shows that it was the programme to let the democratic parishes alone and carry the crusade of fraud into Africa.

PREPOSTEROUS DEMOCRATIC CLAIM.

In the remaining thirty-six parishes of the State, which were all carried by the republicans two years ago, by an aggregate majority of 32,616, the Warmoth board now returns an aggregate democratic majority of 1,556. At an election, which showed large republican gains in every other State in the Union, an astonishing democratic gain of 34,171 in the opposite direction, is claimed in the exclusively republican parishes of Louisiana, by a board which admitted a republican gain in the exclusive democratic parishes of the State.

M'ENERY SENT UP IN A BALLOON.

A comparison of the population of seventeen parishes, with the return of the Warmoth board, completely explodes, of itself, every pretense McEnery can set up to being fairly elected. Those seventeen parishes are: Avoyelles, Assumption, East Baton Rouge, West Baton Rouge, Bossier, Caddo, De Soto, Iberville, Madison, Natchitoches, Plaquemines, Morehouse, Pointe Compée, Rapides, Saint James, Saint Martin, and Saint Mary. From these parishes the Warmoth board returned 17,698 votes for McEnery, and only 14,518 for Kellogg. Majority for McEnery, 3,180. But the population of these same parishes is only 67 570 white, to 145,220 free colored. It is known that many of these whites voted for Kellogg, and that every colored man desired to vote for him. It is

also known that many of the whites are unnaturalized foreigners; also that the proportion of white voters in a given population is smaller than of colored voters. Yet, taking the same ratio of one to five for both colored and white, and admitting for the sake of argument that all the whites were voters, and voted for McEnery, a division of the population given above by five leaves us 13,514 white or McEnery voters, to 29,044 colored or Kellogg voters, or 15,530 colored or Kellogg majority! This is the story of seventeen parishes. The 15,000 to 18,000 colored voters within their limits alone, who were denied a vote, swamp the entire majority McEnery claims in the State, and buries it more than 5,000 votes out of sight, to say nothing of the monstrous frauds in the other parishes.

THE SWORN EVIDENCE.

Below is given a condensation of some of the sworn affidavits, reports, and statements on file in the United States district court. Many of the details of fraud are omitted for the sake of brevity. No rumors, surmises, or mere assertions are incorporated. The names of some of the prominent persons making the affidavits are given with each parish. The parishes mentioned are only specimens where frauds have been already proven. The evidence regarding outrages in a large number of instances is not yet collected.

THE FRAUDS IN CADDO PARISH.

Population—White, 5,913; colored, 15,799.
Registration—White, 1,549; colored, 3,1: 9.
Warmoth return—McEnery, 1,817; Kellogg, 1,57C.
Affidavits—United States supervisors L. Logan, H. C. Logan, Legardy, Whitmore, Hamilton, Mr. Gilbert, and several hundred others, swear:

The Mooringsport box, at which 404 men voted, of whom 310 were colored republicans, was taken on election night into the house of one Hecox, from which the United States supervisor was ejected, and stuffed. Only eighteen republican ballots were allowed to remain. Intimidation was so rampant here on election day that the United States supervisor was thrown out of the voting-room, and only with the aid of a United States soldier was enabled to stand at the window and perform his duty by taking the names of the voters as they entered. When he and the squad of soldiers stationed there were leaving next morning they were followed by a crowd of Ku-Klux, and were fired into several times from the woods. Commissioner Hecox, J. C. Monenre, and A. H. Leonard are under heavy bonds for alleged connection with this affair.

Every United States supervisor was intimidated. One, Mr. Whitmore, was violently driven from Harrison's store, and contracted sickness from exposure in fleeing for his life. A. H. Leonard dragged a colored man from the polls, saying, "Come away; you can't vote here. You are going to vote against me." One Rogers drew a pistol on United States Deputy Marshal Logan at the polls. One Harris threatened to kill some colored men for voting the radical ticket.

Everywhere in the parish there was discrimination against republicans. At Harrison's store colored republicans did not dare to speak to a white republican. At Shreveport the whites were all allowed to vote, but between 600 and 700 of the colored men who came to the polls were kept back, and did not get to cast their ballots. At the closing of the polls, C. W. Keating took the names of 363 of them who had stood there all day, and had not been allowed to vote. At Spring Ridge, after the white men had voted, the process of swearing every colored voter as to the correctness of his registration papers was commenced, which so delayed the polling that large numbers of colored men left for their homes unable to get in their votes.. Over 160 colored men were deprived of an opportunity to vote at Camp Bell, by a similar trick. The affidavits of 500 men thus defranded out of their votes in Caddo have already arrived.

No notice of registration was given at several points. At Nelson's School, five colored men who were first on the ground, were compelled to wait until seventy-three white men arrived, and were registered before they were served.

Not half enough ballot-boxes were furnished. Two boxes were devoted to a thinly-settled, remote white neighborhood, polling together only 175 votes, and only four boxes to the bulk of the parish, containing upward of 3,000 votes, mostly colored. Only two boxes, instead of the usual five, were furnished in Shreveport.

At the large republican precinct of Greenwood, no box was furnished at all. Many colored men were compelled to walk forty miles to reach the nearest box.

THE FRAUDS IN RAPIDES.

Population—White, 7,742; colored, 10,267.
Registration—White, 1,011; colored, 990.
Warmoth return—McEnery, 1,960; Kellogg, 1,169.
Affidavits—Ex-governor J. Madison Wells, Hon. R. A. Hunter, now and for forty

years a leading democrat of the State; District Judge Osborne, J. Madison Wells, jr., Hon. J. B. Lott, Colonel Hawley, M. Boisset, A. F. Lewis, and A. Bailio, swear:

From 1,000 to 1,500 republicans were illegally deprived of registration. Mr. Hunter saw 200 of them attempt and fail to vote at one precinct. State Supervisor Hooe would hide in his house, and have colored men seeking registration, told he was gone to the country, while white men were hunted up, and all registered. Hooe systematically obstructed the registration of colored men by brow-beating and dodging them, and refusing to appear at the places and times he advertised to register. He would frequently make the whites alternate with the colored men, until the whites gave out, and would then close the books, leaving a large colored surplus unregistered. He registered democrats under age and unnaturalized foreigners.

On election day the United States supervisors were intimidated and not allowed to discharge their lawful duties, and were driven from the presence of the ballot-boxes after the polls closed. The boxes were kept in the exclusive custody of the democrats the first night. Then they were taken to Alexandria, locked for forty-eight hours in Hooe's private room before they were counted, where, as Governor Wells and others positively swore, they were stuffed.

At Randolph's Mill two sets of boxes, in violation of law, were kept. In one were deposited the votes of those with new registration papers; in the other the votes of those registered in 1870, which were in law as good as the new registration papers.

Hooe was a candidate for the legislature.

In wresting the ballot-box from the presence of one of the United States supervisors, he said he "intended to count the radicals out any way."

Throughout, the federal and State election laws were both flagrantly violated.

At Cotile, a number of colored voters, with registration papers of 1870, were illegally rejected.

At Rapides poll a number of colored republicans were illegally rejected, on the alleged ground that their names were not on the list, although they had registration papers indorsed by Hooe.

At Smith's poll a number of colored republicans were rejected, on the alleged ground that the numbers on their certificates and the list did not tally.

THE FRAUDS IN NATCHITOCHES.

Population—White, 7,312; colored, 10,929.

Registration—White, 1,486; colored, 1,875.

Warmoth return—McEnery, 1,250; Kellogg, 555.

Affidavits—United States Supervisors Tunard, Blackstone, Ezernow, Lewis, and J. Coughlin.

From 800 to 1,000 colored men were deprived of registration by the dodges and devices of State Supervisor Pierson. The names of 103 he squarely refused to register at the single precinct of Cloutierville are sworn to. He pretended to be out of blanks at this and other points. In Natchitoches he kept a special door for whites to enter and be registered. Instead of the legal ten hours, he frequently only registered one hour or two a day.

Pierson gave no notice whatever previous to election day where the ballot-boxes were to be located, but studiously concealed them from republicans, while every democrat was posted as to their whereabouts. The day before the election he told the United States supervisors he had instructed the commissioners "to locate the boxes where they d—n please—under a pine tree, if necessary." The Bulah box was hid in an abandoned fodder shed in an old field some distance from Bulah. It was found about noon by colored men, who tracked democrats through the woods to it. Previous to its discovery, it is supposed to have been stuffed. A large number of colored men who offered to vote here after they found the box were downrightly refused. The Hawthorn box was also hid a mile from the usual place, and was found in a similar manner. The voting began before the legal hour, and it is supposed the box was stuffed. A number of duly registered republicans who did live in that ward were rejected, on the alleged ground that they did not. One hundred and eighty-eight colored men are sworn, who lived in the Sixth ward, but were rejected, on the alleged ground that they lived in another ward. Only three boxes were furnished in the country, and these were hid. Colored men, in many instances, had to come from twenty to forty miles to reach them, and then hunt them up.

The United States supervisors were intimidated from discharging their duties, and would have been killed had they insisted on their rights. In the town of Natchitoches, the democrats were almost all armed as special policemen, and, as officers of the law, crowded upward of 800 republicans from the polls, and prevented them from voting. Fifteen hundred and fifty colored and white republicans in this parish, who had succeeded in registering, were deprived of an opportunity to vote. Throughout, the Federal and State election laws were flagrantly violated.

THE FRAUDS IN EAST BATON ROUGE.

Population—White, 6,471; colored, 11,343.
Registration—White, 1,431; colored, 1,637.
Warmoth return—McEnery, 1,444; Kellogg, 1,166.
Affidavits—B. J. Vienna, Commissioner Lane, United States Supervisors Husted, Fuller, Forman, Smith, and Pages.

Just 1,855 men, most all colored republicans, were deprived of registration in this parish. It was pretended the registration-books of 1870 had been destroyed, in order to have the opportunity to cut down the republican vote through the farce of an entire new registration. The registered vote of 1870 was 4,928; the republican majority was 1,482. Brady, the State supervisor, so frittered away the time allotted for registration, and obstructed, discriminated against, and squarely refused to register so many colored men, only 3,084 voters were registered altogether. Compelling the colored men to alternate with the whites until the whites were all registered, he would suddenly discover he was out of blanks, close his books, and leave for another point, leaving a large crowd of colored men unregistered at each precinct.

At the peril of their lives, the United States supervisors in the Second, Third, Fourth, Fifth, Sixth, and Seventh wards were intimidated and driven from the presence of the ballot-boxes, which were stuffed by the democratic commissioners during the night before bringing them to Baton Rouge. At the four boxes where the United States supervisors were not intimidated the State count agreed with the federal tally.

G. M. Husted, United States supervisor at Port Hudson, swears that while *en route* to Baton Rouge during election-night, with State commissioner McKittrick, in a carriage, they were halted by a mounted party of men. McKittrick got out and whispered with them. He then took the ballot-box out, with the party, into the woods, saying to Husted he was going no further that night. In a few minutes he returned and said he was going straight on to Baton Rouge. Husted then returned to Port Hudson. One hundred republican were replaced by one hundred democratic ballots, as appeared by comparing the State count with the federal tally.

At poll No. 12 there was a "peaceable," a "fair," and a "quiet" election held. No one registered was rejected, and no stuffing or fraudulent counting was done afterward. But at this same poll crowds with registration papers of 1870, perfectly valid, were rejected. A number of young men who had come of age since 1870 were rejected, and a number who never had an opportunity to register were also rejected.

Two sets of boxes were kept, in defiance of law, in this parish. In the "regular" box the votes of those holding papers under the new registration were deposited. In the "doubtful" box were placed the ballots of those applying to vote with registration papers of 1870. But at most of the polls those with registration papers of 1870 were not even allowed to place their ballots in these "doubtful" boxes, which were kept for some inexplicable purpose.

THE FRAUDS IN SAINT MARY.

Population—White, 4,203; colored, 9,667.
Registration—White, 1,150; colored, 2,203.
Warmoth return—McEnery, 1,239; Kellogg, 1,367.
Affidavits—Hon. A. J. Sypher and others swear:

State supervisor White refused to advertise the places and times of registration, or let his movements be known, thus depriving a large number of colored republicans of an opportunity to register. At poll three there was illegal discrimination; colored men arriving first were kept back until white men arrived later had voted.

A number of legally registered and qualified colored voters were illegally rejected throughout the parish.

The United States supervisors were intimidated and driven from the presence of the boxes after the counting of the national vote. Had they resisted they would have been killed. The boxes were then refilled, and the democratic coterie, locked in the room, stuffed and counted them to suit themselves. Though the republicans carried the parish by 1,595 majority two years before, these democrats counted their parish ticket elected.

The polling-places were not announced previous to election day. Many colored men were compelled to walk twenty miles, and then failed to find a poll.

THE FRAUDS IN BOSSIER.

Population—White, 3,505; colored, 9,170.
Registration—White, 587; colored, 1,795.
Warmoth return—McEnery, 953; Kellogg, 555.
Affidavits—Judge Baker, M. Thomas, Percy Baker, and 1,300 other voters swear:
Wholesale intimidation was practiced throughout the parish. Terrible threats

were made to revive the fearful election massacre of four years ago, at which several hundred colored men were killed. The registered colored majority of 1,208, to say nothing of the white republicans, was thus converted into a democratic majority of 398. The affidavits of about 1,300 men deprived of a vote in this parish are on file. A body of Ku-Klux, commissioned as constables, did the work.

THE FRAUDS IN PLAQUEMINES.

Population—White, 3,703; colored, 9,845.
Registration—White, 518; colored, 2,703.
Warmoth return—McEnery, 467; Kellogg, 1,034.
Affidavits—The United States supervisor and 1,314 colored men who were deprived of the right to vote swear:

The overwhelming republican majority two years ago of 2,338 in this parish, where almost everybody votes the republican ticket, was cut down to 567 by simply refusing the population an opportunity to register and vote. The nearest polling-place to most of the voters was forty miles distant. Each of the 1,314 affidavits details outrages of this kind.

THE FRAUDS IN IBERVILLE.

Population—White, 3,669; colored, 8,675.
Registration—White, 743; colored, 3,303.
Warmoth return threw out the whole parish.
Affidavits—The United States supervisors and others swear:

The colored registered majority of 2,560 in this parish was completely annihilated by throwing out the whole parish, on the ground, forsooth, that the democrats had attempted to stuff 230 bogus ballots into the Bayou Goula box, and got caught at it. This was, at least, the only irregularity ever yet charged. This instance is worthy of especial note, in connection with the significant fact that the democrats confined all their attempts at frauds to republican parishes. The failure to carry a republican parish by stuffing the ballot-boxes is made the pretext by a democratic returning board for throwing out the vote of the parish. Thus, in either the failure or success of democratic frauds, the democrats were to be gainers and the republicans losers.

THE FRAUDS IN POINTE COUPEE.

Population—White, 3,752; colored, 9,229.
Registration—White, 1,070; colored, 2,710.
Warmoth return—McEnery, 1,142; Kellogg, 1,552.
Affidavits—United States supervisors B. Dayries, E. Eonbre, R. McGowan, W. Tinsly, L. Allen, and others, swear:

The United States supervisors were intimidated and driven from the presence of the boxes after the closing of the polls. When the voting was completed, their demand that the boxes be sealed according to law was disregarded.

Almost every box was stuffed. At boxes 5 and 6, 460 republican and 63 democratic votes were cast. But after sleeping one night with the democratic clique, the 460 republican votes melted to 20. According to the affidavit of E. Eonbre, General B. B. Sims took box 2, after the voting, in a boat upon the Atchafayla, and with the aid of an accomplished clerk, in less than one day, "worked" the large republican majority down to the neighborhood of nothing. One Harris, democratic candidate for the legislature, and others, took box 3 by force from the custody of the United States supervisors into a private room. Some of the democrats kept a crowd of colored men at the door at bay, while others inside quickly reduced the 250 republican ballots that had been put into it to only 20. Just 220 republican and 35 democratic votes were put into box 4, but after one night in the exclusive company of democrats it shook out 235 democratic to only 20 republican votes.

THE FRAUDS IN MADISON.

Population—White, 936; colored, 7,663.
Registration—White, 360, colored, 2,365.
Warmoth return—McEnery, 828; Kellogg, 1,227.
Affidavits—Mr. Moore, Mr. Murrell, A. B. Brown, J. Howard, and several hundred others, swear:

The colored majority of 2,005 was cut down to 399, partly by refusing to register, without pretext, a large number of colored men, 163 of whom are already sworn to, and chiefly by stuffing the boxes. At every precinct the chief constables (commissioned Ku-Klux) drove the United States supervisors from the presence of the ballot-boxes. They were taken in exclusive possession by the accomplices of Cahoon, the State supervisor, stuffed, and, in one instance, changed for another box during the night of the election, and made to count out as above. Cahoon is under bonds for this crime, and is awaiting his trial.

THE FRAUDS IN GRANT.

Population—White, 2,078; colored, 2,414.
Registration—White, 630; colored, 776.
Warmoth return—McEnery, 514; Kellogg, 405.
Affidavits—G. E. Brantiy, D. Brantly, W. S. Calhoun, L. Wheeler, William Ward, T. M. Wells, E. B. Flowers, swear:

L. Wheeler and many other colored men were compelled to vote for Greeley, when they wanted to vote for Grant and the republican State ticket. No man can vote the republican ticket and live in Wheeler's neighborhood. From 250 to 300 colored men in the parish were deprived of their votes through intimidation.

The registration began seven days behind the legal time, and every colored man, old and young, was made to prove his age before he was registered.

The Gorie's box was wrested from the presence of United States Supervisors Flowers and Wells, kept in a private residence all night, and showed next day unmistakable signs of having been broken open, stuffed, and blunderingly repaired. A hole was left through which to stuff additional bogus ballots if necessary to carry the parish.

In counting the ballots at Colfax the democratic commissioner would take two ballots at a time, and placing the democratic one on top, would only count it.

MISCELLANEOUS FRAUDS.

In Jefferson.—The United States supervisors at Camp Parapet swear that 607 ballots were put in the box, over 500 of which were republican ballots, of a peculiar device, designed by Hon. Charles W. Lowell. The State commissioners themselves swear that over four-fifths of the votes cast were republican ballots of this peculiar device, but that when the box was subsequently opened it contained 555 straight liberal ballots that were not cast on election day, and had unquestionably been stuffed in. Even the State supervisor of the parish, on opening the box, exclaimed: "Here is a palpable fraud!"

In Jackson.—The republicans there were shamefully intimidated. One Bishop is under $10,000 bonds for participating in this business.

After counting the national votes the federal supervisors were fired upon; two were shot and wounded, and all compelled to flee in order that the ballot-boxes might be stuffed without molestation.

In St. Landry.—United States Supervisor E. L. Andrew swears he was intimidated from performing his lawful duty. Some five hundred men were compelled to vote the democratic ticket on pain of a repetition of the terrible massacre of 1868. About 1,500, by the same sort of intimidation, were deterred from voting.

In Livingston.—The shooting of one colored man and the wounding of another by democrats intimidated the colored republicans from voting to a great extent.

In Lafourche.—Thirteen democrats under age were registered and permitted to vote. Sixty-one democrats registered and voted twice; ten of them had the same number and name, and fifty-one had the same number but different names on their double certificates, as was proven by comparison of United States supervisor's table with State lists after election. Thirty-three fictitious democratic ballots were detected in the boxes which were never voted. There were at least one hundred and fifty of this kind.

In Webster parish all the United States supervisors were intimidated. Fifty colored men were intimidated from voting at poll six by threats of their employers to discharge them. Mr. J. Rowan, president of a republican club, was arrested by the chief constable on election day for trying to prevent spurious republican tickets from being palmed off on the members of his club by democrats. Fearing to vote at their own precincts, some colored men slipped away to Minden, but were followed, threatened and intimidated by their employers. A man named Branch dragged his colored servant by the arm to the polls and compelled him, though begging and shedding tears, to deposit a democratic ballot. J. M. Waggener, United States supervisor at Slungalba, was fiercely threatened with death if he followed the box to Minden. F. S. Heath swears box one, ward one, in exclusive charge of democrats, was brought to Minden unsealed, and his protest against counting it, on the ground that it had been stuffed, was overruled. At box one, ward six, United States Supervisor Lewis swore voting began before the lawful hour in a box which the democrats refused to let him examine to see that it was not stuffed in advance. At eleven the contents of this box were emptied into another, supposed also to be stuffed, which he was likewise not permitted to examine. The tally of Mr. Lewis showed four hundred and five republican to one hundred and seventy-five democratic votes cast, but the democratic count produced a democratic majority.

F. S. Heath swears to the names of ten democrats who voted, but who were not registered until four days after the election.

In Terrebonne.—State Supervisor Stokes counted eight boxes, and they turned out such heavy republican majorities that seeing no chance to stuff the remaining boxes, he left in the night and resigned, thus giving the Warmoth returning-board a pretext

to throw out a large republican parish, on the ground that the supervisor did not count the votes.

In Catahoula.—Mr. J. J. Randolph, an old citizen, swears the registration did not begin until nineteen days behind the legal time, and that thus from 400 to 600 colored republicans were denied registration.

In Winn.—D. Brantly says he was intimidated from making a republican speech in Winn; that the colored men were overawed, and afraid to cast their votes for the candidates of their choice.

In West Baton Rouge.—The registered republican majority of 464 was overcome by a conspiracy between the democrats and T. T. Allain, a United States supervisor, by which democratic tickets were palmed off upon ignorant colored voters for republican tickets.

In Union.—The intimidation so grossly practiced two and four years ago was to a great extent repeated. A number of voters swear they were driven from the Downsville poll. There were 783 colored and upwards of 80 white voters on the rolls of the republican clubs, every one of whom intended to vote the republican ticket, yet only 489 votes were counted out for that party. After the congressional and electoral votes had been counted, the boxes were sealed up, and, it is averred, were closed before the counting of the State vote, from which the Federal commissioners were excluded, in defiance of their protest. The democrats boast that they deceived 200 colored voters in this parish with counterfeit tickets.

In Claiborne.—Mr. Scott was Warmoth's supervisor, and swears no legal election was held in Claiborne. A party named Simmons had been appointed to supersede Scott, but too late to get legal possession of the office. Without poll-books, without legally designated polling-places or commissioners, Simmons and the democratic mob held an election in defiance of every legal formality. Mr. Scott was intimidated from attempting to hold the legal election by threats of riot.

In St. Helena.—Sworn evidence is on file that W. S. Lee, J. Royes, B. Quinn, and M. Lee stuffed the boxes in St. Helena with democratic ballots.

H. P. Womock, J. Rogers, and B. Quinn are under heavy bonds for ku-kluxing and intimidating colored republicans. A. Kemp is also under bonds for belonging to the Ku-Klux, and assaulting, to kill, a republican.

In St. Tammany.—Thompson, Morton, Nican, and Brodly are each under $5,000 bond for intimidating United States supervisor and republican voters; an attempt to drive the Federal supervisors from their posts having failed because the State supervisor refused to count the vote at all if he had to count it in their presence. Thus he gave a pretext to the Warmoth board to throw the parish out with its republican majority. Weems is under bonds for refusing to register a number of legally qualified colored voters.

In St. Martin.—The election was fair, peaceable, and quiet, but was thrown out by the Warmoth board evidently because it went republican, and to give the democratic governor, elected by such tricks, a chance to appoint the defeated democratic candidates to the parish offices to which the people refused to elect them.

In Iberia.—There was not the whisper of fraud on either side. It was unquestionably thrown out for the same reason that St. Martin was.

St. James.—Mr. F. L. King, of New Orleans, swore that State Registrar B. P. Blanchard, T. Connell, Miles Sharkey, J. C. Golding, and Dr. Stephens conspired, about the twenty-fifth of October, to defraud the voters of St. James; that they suppressed and failed to make true returns; that at two polls they changed and altered the ballots, and caused to be prepared four ballot-boxes to be used and stuffed. Because democrats committed these frauds themselves, this board threw out this parish with its 1,637 republican majority of two years ago.

THE FRAUDS IN NEW ORLEANS.

The frauds committed in the city have not yet been gathered together. Suffice it for the present to call attention to a few facts. St. Louis, at the late election, with a population of 313,000, on a full vote polled 36,000 votes. New Orleans, we are told, polled on the same day 36,000 also, although her population is only 191,000, or less than two-thirds that of St. Louis. Here is a strong indication that over 12,000 of the 36,000 votes cast in this city were cast by repeaters upon fraudulent registration papers. Much proof is already at hand to confirm this supposition. The letter of Blanchard to Hon. S. B. Packard, peremptorily refusing to appoint any republican commissioners, points in that direction. Some men have been caught voting as high as seventeen times. One hundred and twenty-six registration papers have been detected which were issued for one small house in the Sixth ward. Just before the election Blanchard published a long list of hundreds of colored republicans whom he charged with fraudulent registration, as though such things were possible with everything in the hands of the democrats, notifying them to show cause why their names should not be erased. Of course they could not read, did not see the notice, did not come, and they were disfranchised. Democratic tickets, with Burke's name for Administrator of Improvements,

were printed for stuffing purposes after the election, by R. H. Benners, on Camp street, according to sworn examinations on file. So untrustworthy were the persons having charge of elections in the city, that the reformers admit their candidates would have been swindled out of the offices to which they were elected but for the aid of the Federal supervisors. Other and abundant proof of frauds in the city is now being collected. They consist mostly in the issuing of fraudulent registration papers, which were voted by repeaters, unnaturalized foreigners, and minors, and are consequently difficult and slow of detection.

DOCUMENT D.

Table showing the white and colored voters—registration of 1872.

Parish.	White.	Colored.
Ascension	1,511	3,014
Assumption	1,874	2,169
Avoyelles	1,794	2,208
East Baton Rouge	1,431	1,500
West Baton Rouge	397	861
Bossier	587	1,795
Bienville	920	713
Calcasieu	729	139
Catahoula	1,010	1,107
Concordia	296	2,526
Caddo	1,549	3,139
Caldwell	544	586
Carroll	718	1,910
Claiborne	1,377	1,298
De Soto	821	1,303
East Feliciana	1,100	2,351
West Feliciana	590	2,215
Grant	630	776
Iberia	1,149	1,263
Iberville	743	3,303
Jackson	1,110	816
Jefferson, right bank	550	1,440
Livingston	766	225
Lafourche	1,704	1,871
Morehouse	737	1,358
Madison	360	2,365
Natchitoches	1,486	1,875
Ouachita	912	1,630
Plaquemines	518	2,703
Pointe Coupee	1,070	2,710
Rapides	1,011	990
Red River	441	966
Richland	599	644
Saint Bernard	308	401
Saint Charles	300	1,850
Saint James	658	2,068
Saint John	817	1,717
Saint Landry	3,358	4,000
Saint Mary	1,150	2,203
Saint Martin	1,038	1,019
Tangipahoa	919	618
Terre Bonne	1,201	1,608
Tensas	386	3,146
Winn	1,832	876
Vermillion	845	268
Vernon	457	194
Webster	848	866
Winn	758	132
	45,909	74,735

The above table exhibits the registration outside the parish of Orleans, except as to the unascertained figure of the parishes of Cameron, Franklin, Sabine, and Washington.

According to the returns in the recent election, these four parishes would reduce the republican aggregate 1,077, the fusionists having cast 1,768 and the republicans 691 votes. As to the parish of Orleans, the registration books exhibit no registration figures on the basis of color, and the fusion ticket was returned elected by about 9,000 majority.

Document E.

REGISTRATION ACT OF LOUISIANA.

No. 99.

AN ACT to provide for the revision and correction of the lists of registered voters of the State, the appointment of the various officers necessary therefor, and to prescribe the duties, powers, and compensation of the same; to prescribe certain duties for the sextons of the cemeteries of New Orleans; to prescribe the penalties for the violation of the law, and to provide for a new registration in certain parishes and wards.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened,* That the governor, by and with the advice and consent of the senate, shall, upon the passage of this act, and every two years thereafter, appoint a person to be known as State registrar of voters, who shall hold his office for two years from the date of his appointment. The State registrar of voters shall be the supervisor of registration for the parish of Orleans, and as such shall perform all the duties and exercise all the powers herein prescribed for the supervisor of registration in a parish.

SEC. 2. *Be it further enacted, &c.,* That the said State registrar of voters, before entering upon the duties of his office, shall take and subscribe to the oath required for State officers, and give bond, with good and solvent security, to the governor of the State in the sum of ten thousand dollars for the faithful performance of his duties.

SEC. 3. *Be it further enacted, &c.* That the salary of the State registrar of voters shall be three thousand dollars per annum, payable quarterly, out of the State treasury, upon his own warrant.

SEC. 4. *Be it further enacted, &c.,* That the State registrar of voters shall keep his office open every day in the year (Sundays and legal holidays excepted) until further provided. The State registrar of voters shall, with the approval of the State treasurer and finance committee of the senate, rent a suitable office in the city of New Orleans, of which he shall give due notice to the auditor of public accounts. The supervisors of registration for the parishes of Orleans and Jefferson are empowered to rent or hire such offices as may be necessary for the registration of the qualified voters, with the approval of the State treasurer and the finance committee of the senate, of which they shall give due notice to the auditor of public accounts. All accounts for rent herein provided for shall be written in detail, giving the time occupied and the amount of rent per month, which account shall be certified under oath by the supervisor of registration of the parish as true and correct, and approved by the State registrar of voters, the treasurer of the State, and the governor; and upon presentation of any such account, so certified and approved, the auditor of public accounts shall issue his warrant for the sum named therein upon the State treasurer, payable out of the funds appropriated for the expenses of the revision of the next registration and election. He shall have one clerk, who shall receive a compensation of fifteen hundred dollars per annum, payable quarterly, upon his own warrant, approved by the State registrar.

SEC. 5. *Be it further enacted, &c.,* That the registration records of the State, at present in the office of the secretary of state, shall be transferred to the office of State registrar of voters as soon as said officer shall have been appointed and duly qualified, and said records shall remain in his possession for the purpose of correcting and revising the registration.

SEC. 6. *Be it further enacted, &c.,* That it shall be the duty of the sexton of each cemetery in the parishes of Orleans and Jefferson to deliver, "within thirty days after the passage of this act, a list of the names, ages, and late residences of all males over twenty-one years of age who have been interred in their respective cemeteries since the twenty-fourth day of October, eighteen hundred and sixty-eight, and also," on or before the fifth day of each month, at the office of the State registrar of voters, a list of the names, ages and late residences of all males over twenty-one years of age who have been interred in their respective cemeteries during the preceding month, and in the event of any such sexton failing or neglecting to so do, he shall be liable to a fine of twenty-five dollars, to be recovered before any court of competent jurisdiction, for the benefit of the Charity Hospital.

SEC. 7. *Be it further enacted, &c.,* That it shall be the duty of the State registrar of voters to erase from the list of registered voters the names of all persons reported by the sextons of the several cemeteries of the parishes of Orleans and Jefferson as de-

ceased, and the names of any persons who shall be proven in the manner hereinafter to be established to have been fraudulently registered in such parishes.

SEC. 8. *Be it further enacted, &c.*, That it shall be the duty of the State registrar of voters to cause to be furnished, at the expense of the State, all such books, paper, and blanks as may be necessary to enable the supervisors of registration to properly perform their duties in a uniform and regular manner.

SEC. 9. *Be it further enacted, &c.*, That it shall be the duty of the State registrar of voters to submit to the general assembly, each year, within ten days after the commencement of its session, a full and detailed report of the work of registration for the past year, showing the number registered, the number of native and foreign born, how many sign their name and make their mark; also, a detailed statement, showing the number of names stricken from the list of voters, with their nationality, and such other particulars as may be desirable for the information of the general assembly.

SEC. 10. *Be it further enacted, &c.*, That upon the passage of this act the registry-books for the parish of Orleans shall be deposited in the office of the State registrar of voters, and the registry-books for each of the other parishes in the State shall be deposited in the office of the district clerk of the court of the parish; and said clerk shall deliver the books to the person who may be appointed supervisor of registration for the parish, when so requested; and during the time said registration books shall remain in the custody of said clerk, he shall be responsible for their safe-keeping, and shall not permit the name of any person to be added to or erased from the list of said registered voters, under a penalty of five hundred dollars for each offense, recoverable before any court of competent jurisdiction, one-half to go to the informer and the other half to the school-fund of the parish.

SEC. 11. *Be it further enacted, &c.*, That the governor shall, six months previous to any general election, appoint in each parish of the State, except the parish of Orleans, one supervisor of registration, who shall hold his office for two years from the date of his appointment. The clerk of the court shall deliver to said supervisor of registration the books of registration delivered to him by the last supervisor of registration.

SEC. 12. *Be it further enacted, &c.*, That it shall be the duty of the supervisors of each of the parishes of the State, appointed as aforesaid, to cause to be registered every qualified elector in their respective parishes, without expense to the elector, and in such manner as to show separately the number of qualified electors in each police-jury ward of their respective parishes. That said supervisors are hereby authorized to go from place to place, besides keeping the necessary offices, and to render every facility to the qualified electors, and to take care that all who are qualified to vote shall be registered.

SEC. 13. *Be it further enacted, &c.*, That two months previous to any general election the supervisors of registration for the parishes of Orleans and Jefferson shall each appoint, for his respective parish, one assistant supervisor of registration for each ward in the city of New Orleans, one for the city of Jefferson, one for the remaining part of the parish of Jefferson on the left bank of the Mississippi, one for the remaining part of the same parish on the right bank of the Mississippi River, and one for the right bank of Orleans. The term of office for such assistant supervisors of registration shall not continue beyond the day of the general election aforesaid. Such assistant supervisors shall have generally the same powers and perform the same duties, subject to the direction of the supervisors of registration of their respective parishes, as are herein prescribed for supervisors of registration, and shall perform such other duties as are hereinafter prescribed.

SEC. 14. *Be it further enacted, &c.*, That the officers appointed under this act, before entering upon their respective duties, shall severally make and subscribe an affidavit before a justice of the peace, or some other officers duly authorized to administer oaths or affirmations, that they will perform their duties with fidelity, and will, to the best of their ability, maintain and protect the rights of all qualified electors within their respective election precincts, and will expose all attempts and combinations, that may come to their notice, to procure the fraudulent registering of persons who are not qualified electors, within their respective precincts, or to procure the fraudulent votes to be polled at the succeeding election, and shall also each take the oath of office and of eligibility prescribed for State officers.

SEC. 15. *Be it further enacted, &c.*, That the supervisor of registration for each parish, except the parishes of Orleans and Jefferson, shall open his office on the first Monday in September before each general election. In the parish of Jefferson the supervisor of registration shall open his office on the first Monday in September before the general election. The assistant supervisors of registration, in the parishes of Orleans and Jefferson, shall open their offices in their respective wards and localities on the first Monday in September, before each general election, at such places as the supervisor of registration for the parish may designate. Said offices shall be kept open to all persons claiming to be registered or qualified electors until the ninth day before each general election. Each supervisor and assistant supervisor of registration shall attend at his office, for the purpose of revising and correcting the registry of voters, from 7 o'clock

a. m. until 12 o'clock m., and from 2 o'clock until 7 o'clock p. m., each day, from the time fixed by law for the opening of the offices of registration until the close thereof.

SEC. 16. *Be it further enacted, &c.*, That each supervisor of registration and assistant supervisor of registration shall receive as compensation seven dollars per day for each day he shall discharge the duties of his office, from the time at which he shall open his office until the time when he shall complete his statement of the election. Each supervisor and assistant supervisor of registration shall make out a specific account for his compensation, sworn to and subscribed by him, which shall be appended to an authenticated copy of his appointment. Said account shall be examined, and, if correct, approved by the governor, and the auditor of public accounts shall, upon presentation thereof, issue his warrant upon the State treasurer for the sum named therein, payable out of any funds in the State treasury not otherwise appropriated: *Provided*, That no supervisor of registration shall receive any compensation for his services until he has complied with the provisions of this act.

SEC. 17. *Be it further enacted, &c.*, That each supervisor of registration and assistant supervisor of registration shall have one clerk, who shall receive, as compensation, five dollars per day for the time he is actually employed; not to exceed the length of time for which the supervisor or assistant supervisor of registration for the parish or ward may receive pay.

SEC. 18. *Be it further enacted, &c.*, That any supervisor or assistant supervisor of registration who shall swear to a false account shall be deemed guilty of perjury, and upon conviction thereof shall be subject to the pains and penalties by law provided for perjury.

SEC. 19. *Be it further enacted, &c.*, That it shall be the duty of the supervisor of registration for each parish, when he opens his office, to take up the registration-book he has received from the clerk of the district court and proceed to an immediate revision of the same, by striking therefrom the name of every person who known by him to have died or removed from his parish since the last previous registration, or whose death or removal from the same shall be made known to him; and upon the application of any qualified voter, who shall be known by him to have moved into the parish since the last previous registration, or whose removal into the same shall be or shall have been made known to him, to add the names of such voters to the registration-book. In the parishes of Orleans and Jefferson, during the time the work of revision is going on, the supervisor of registration shall visit, or cause to be visited, every dwelling-house in his ward, and make careful inquiry if any person whose name is on his list has died or removed from the ward, and if so he shall take his name therefrom; or whether any qualified voter resides therein whose name is not on his list, and if so he shall add the same thereto; and the supervisor of registration shall in all cases ascertain by inquiry upon what ground the person so registered claims to be a voter. Upon the completion of the revision of the list of qualified voters it shall be the duty of the assistant supervisors of registration to make out a list in alphabetical order of the qualified voters in the ward, city, town, or precinct of which he is the assistant supervisor of registration, and opposite each of said names state whether said voter is or is not a housekeeper, and if he is, the number of his residence, in towns where the same are numbered, with the street, alley, or court in which situated, and if in a town where there are no numbers, the name of the street, alley, or court on which said house fronts, also the occupation of the person, and, where he is not a housekeeper, the occupation, place of boarding, and with whom. Where any person claims to be registered by reason of naturalization, he shall exhibit his certificate thereof to the supervisor of registration, and in all cases where the person has been naturalized, the name shall be marked "N," and if the person has removed into the parish to reside since the last election, the letter "R" shall be placed opposite the name.

SEC. 20. *Be it further enacted, &c.*, That before each and every parish, city, town, or ward election, other than the general election, the supervisor of registration for the parish in which such election shall be held shall open the office for the purpose of revising the list of registered voters, by adding thereto the names of all qualified electors who may have become such since the last revision of the registration, and of striking therefrom the names of all persons who may have ceased to be qualified electors of such parish, and such revision of registration shall be conducted in the same manner and subject to the same provisions as are herein laid down for the revision of registration before the general elections, except as to time. In the city of New Orleans the offices of registration shall be open fifty days, commencing sixty days before any such election. In the city of Jefferson the offices of registration shall be open twenty days, commencing thirty days before such election. In all other parts of the parishes of Orleans and Jefferson, and in each parish, except the parishes of Orleans and Jefferson, the offices of registration shall be open, commencing twenty days before such election. All offices of registration shall close nine days before any election, and on the fourth Monday in August before the holding of any general election, and before the beginning of any revision of the registry, prior to any special election, and regularly therefrom until the closing of the books of registration therefor, the supervisors of registration in the

said parishes shall give notice by publication to all voters who are not registered, and desire to be registered, to come forward and cause the same to be done; and shall give notice, also, to all registered voters who have changed their places of residence since they were registered to appear and have their present places of residence, or those they will occupy at the time of the election, noted on the books of registry and on their certificate of registry, which notice, giving the hours and places of appearing, shall be published in two newspapers in the parish, if there be more than one, and posted at as many public places in the parish as is reasonably practicable, and in New Orleans shall be continuously published in English at least in three daily newspapers, and in one each in French and in German.

SEC. 21. *Be it further enacted, &c.*, That the respective supervisors and assistant supervisors of registration shall have each the power to administer oaths to any person claiming the right to be registered, or in regard to any other matter or thing required to be done or inquired into by any of said officers under this act; and any willful false swearing by any person, in relation to any matter or thing concerning which they shall be interrogated by any of said officers, shall be punished as perjury.

SEC. 22. *Be it further enacted, &c.*, That every person of foreign birth, claiming a right to be registered, shall, in addition to the proof of residence, prove that he has been naturalized conformably to the laws of the United States; and, as evidence thereof, he shall produce a certificate of naturalization, under the seal of the court in which naturalization took place, duly attested by the clerk of said court in his own proper handwriting, and shall prove by the oath of a qualified elector of the election precinct that he is the person named in the said certificate, and the person to whom it was issued; and shall further answer upon oath, to the satisfaction of the supervisor or assistant supervisor of registration before whom the said certificate may be produced, when and where he was born, and when and where he obtained the certificate, and from whom; and the said certificate shall not be evidence that the person presenting it is a naturalized citizen unless his answers be consistent with the facts certified, and the proof of his identity be satisfactory to the supervisor or assistant supervisor of registration; and upon such proof being made to the satisfaction of the supervisor or assistant supervisor of registration, but not otherwise, he shall register the name of the claimant on the registration-books, and shall stamp or write on the said certificate of naturalization the word "registered," with the number and precinct of the ward or parish and the date of registry.

SEC. 23. *Be it further enacted, &c.*, That the supervisor of registration for the parish shall carefully examine the registration-books, and if upon due inquiry and investigation he shall find the name or names of any person or persons therein, not entitled to vote in his parish at the next election, he shall strike the name of every such person therefrom by drawing a line in red ink through the same; but the name of no person shall be stricken from any registration-book in his absence, except upon the testimony of at least two reputable citizens, qualified electors of the parish, whose names appear upon the said registration-books, to be given under oath or affirmation, that such a person is not a resident of the precint or parish, or is otherwise disqualified by law from voting at said election; and the said supervisor of registration shall also examine and revise the book of registration of his parish, and shall strike therefrom the names of all persons who are not residing in the parish or precinct on the tenth day before the election, and the names remaining on the said book of registration, as corrected by the supervisor of registration as aforesaid, shall constitute the registry of citizens qualified to vote in the said parish at the next election.

SEC. 24. *Be it further enacted, &c.*, That the said book of registration shall be the only evidence that the persons whose names are found therein have resided for ten days immediately preceding the said election in the said parish.

SEC. 25. *Be it further enacted, &c.*, That the registration of the voters of this State shall be closed nine days previous to any election; and it shall be the duty of the supervisor of registration, in every parish in this State, to make out and furnish certified copies of the lists of the registered voters, provided for in section eighteen, to the commissioners of election of each precinct or polling-place, to be used at the election or elections to be held therein; and the failure of the supervisor of registration to furnish such copies of the list of registered voters before the hour of opening the polls, shall subject such delinquent supervisors of registration to a fine of not less than one hundred nor more than five hundred dollars, to be recovered for the use of the parish in which the failure to perform the duty occurred, to be sued for in the name of the parish; and it shall be the duty of the district attorney *pro tempore* of such parish to institute any suit, whenever any such delinquency shall be brought to his knowledge by any commissioner of the election, or when it is known to himself.

SEC. 26. *Be it further enacted, &c.*, That the supervisor of registration of each parish shall keep his office, except in the parish of Orleans, at the court-house of the parish, and may establish such places for the registration of voters other than the court-house, not exceeding five in number, as may be necessary to enable electors to register with as little inconvenience as possible; and in all cases publication of the offices of regis-

tration, as selected by the supervisors of registration, shall be made for thirty days in the official journal. In the parishes of Orleans and Jefferson, the supervisor of registration shall establish offices at such places as will facilitate the registering of voters as far as possible. The supervisor of registration for each parish shall require every person, before he is registered as a voter, to take and subscribe any of the following affidavits, as the case may require, and the supervisor of registration is hereby authorized to administer said oaths:

I, ———, do solemnly swear (or affirm, as the case may be) that I am twenty-one years of age, was born (or naturalized, as the case may be) in the United States, and am subject to the jurisdiction thereof, and have been a resident of the State of Louisiana since the —— day of ———, and a resident of this parish since the —— day of ———, and that I am not disfranchised for any of the causes stated in the first paragraph of article ninety-nine of the constitution of this State.

And I do further solemnly swear (or affirm, as the case may be) that I did not hold any office, civil or military, for one year or more, under the organization styled "the Confederate States of America;" that I never registered myself as an enemy of the United States; that I never acted as leader of guerrilla bands during the late rebellion; that I never, in the advocacy of treason, wrote or published newspaper articles or preached sermons during the late rebellion; that I never voted for or signed an ordinance of secession in any State.

The last paragraph of the above affidavit shall be dispensed with where the person applying for registration shall produce and exhibit to the supervisor of registration the certificate of the secretary of state, showing that he has relieved himself from the disability contained in the clauses of said affidavit, by voluntarily writing and signing a certificate setting forth that he acknowledges the late rebellion to have been morally and politically wrong, and that he regrets any aid and comfort he may have given it, and showing that such certificate has been filed in the office of the secretary of state, and been published in the official journal, as is required by article ninety-nine of the constitution, and the act of the general assembly, prescribing the necessary forms for such certificate, and the registry and publication thereof.

The taking and subscribing the affidavits required by the preceding part of this section shall not prevent the supervisor of registration from receiving other evidence, showing that the party applying for registration is not entitled to register; and they shall have a right to examine, under oath, to be administered by themselves, or other competent authority, any witness to prove any fact pertinent to the right of any one to register, and shall decide from the evidence whether the party so applying is entitled to register. That if any person applying to register claims to be relieved from the disabilities contained in the second clause of the aforesaid affidavit, under the proviso to article ninety-nine of the constitution, he shall be required to take and subscribe the following affidavit, and thereupon he shall be admitted to registration:

I, ——, do solemnly swear (or affirm, as the case may be) that, prior to the first day of January, eighteen hundred and sixty-eight, I favored the execution of the laws of the United States, popularly known as the reconstruction acts of Congress, and openly and actively assisted the loyal men of the State in their efforts to restore Louisiana to her position in the Union.

Any person who shall swear falsely to any one of the foregoing affidavits, or any clause thereof, shall be deemed guilty of perjury, and on conviction thereof shall be punished as prescribed by law.

SEC. 27. *Be it further enacted, &c.*, That it shall be the duty of the supervisor of registration, in adding to the registry of voters, to record in a good substantial book, prepared for the purpose, the names of duly qualified voters residing in their respective parishes, the following particulars, and in the following order: Date of registration, number, name, residence, occupation, ward or precinct, length of residence in the parish or State, whether native-born or naturalized; if naturalized, when and how, with the signature or mark of the voter; and in the event of the voter making his mark, the supervisor of registration shall attest the same.

SEC. 28. *Be it further enacted, &c.*, That should the applicant for registry have been born without the limits of the United States, and afterward become a citizen thereof other than by naturalization in the courts, then he shall make affidavit, and set forth the circumstances whereby he became a citizen, such as the naturalization of his father, or by his residence in any State or Territory when the same was acquired by or ceded to the United States, or in any other manner whereby, under the laws of the United States, he would become a citizen thereof: *Provided*, That affidavits authorized to be made by this act may be sworn to before the supervisor of registration, but in no case, or under any circumstances, shall the supervisor of registration make any charge, or demand any fee, under penalty of removal from office.

SEC. 29. *Be it further enacted, &c.*, That on the personal application of any citizen of the State claiming to be registered as a resident of the parish or ward, and on due proof of citizenship and residence, in the manner prescribed by this act, the supervisor of registration or assistant supervisor of registration of the ward or parish shall enter the full original and surname of the claimant in the registration-

book for the precinct of the ward in which the claimant actually resides; and the names of all such persons shall be alphabetically arranged in said books, and the occupation and residence of every such person, and the name of the country in which he was born, shall be written therein opposite the name of every such person; and in addition to any other proofs that may be required under this act, every person who claims to be registered in said election precinct shall make and subscribe an affidavit before the said supervisor of registration or assistant supervisor of registration, setting forth—

First. His name, the place and country of his birth, his occupation and place of residence.

Second. That he is a citizen of Louisiana, and will have resided in this State, on the day of the next election, the full period required by the constitution to entitle him to the rights of an elector, and that he is at least twenty-one years of age.

Third. That he is a resident of the election-precinct in which he claims to be registered, and has no other place of residence, and the said affidavit shall be in the form following, to wit:

In the ——— election-precinct of the ——— parish, ———. Be it remembered, that on the —— day of ———, in the year ——, personally came before the supervisor of registration or assistant supervisor of registration of said parish, ———, who, being duly sworn, (or affirmed,) doth depose and say as follows, to wit:

My name is ———; I was born at ———, in the year ——. My occupation is ———, and I reside at ———, (if in a city or town,) number —, ——— street. I am a citizen of Louisiana, and have been residing in this State ever since the —— day of ——, in the year ——. I am now claiming to be registered in the ——— election-precinct, in the parish of ———, (or if in a city or town,) in the ——— ward of the city of ———, in which I now reside. I have no other place of residence, and I did not remove to the said election-precinct for the purpose of voting therein, but for the purpose of making it my place of residence, in pursuance of my lawful calling.

——— and subscribed to this —— day of ———, A. D. ——, before me.

———, ———,

Supervisor of Registration for the ——— Ward.

The supervisor of registration or the assistant supervisor of registration shall write the name of the claimant in the proper places in the affidavit, and fill the other blanks left therein with the proper names, dates, words, and figures, before the claimant swears to or subscribes the same, and he shall sign his name to the jurat; and if the claimant be an alien by birth, he shall make such proof in all cases as is required by this act, that he has been naturalized conformably to the laws of the United States; and if the supervisor of registration or the assistant supervisor of registration shall so require, the claimant shall also prove his residence by two qualified electors, as hereinafter provided; and upon the said affidavits and proofs being made to the satisfaction of the supervisor of registration or the assistant supervisor of registration, he shall register the name of the claimant on the registration-books aforesaid.

SEC. 30. *Be it further enacted, &c.*, That the supervisor of registration shall issue to every citizen, at the time he is registered, a certificate, exactly corresponding in number, name, residence, &c., with the original registry, and the presentation of such certificate to the commissioners of election shall be full proof of the facts therein contained, and of the elector's right to vote at the date of granting such certificate. Such certificate shall be on the same paper with the affidavit required in the preceding section, and in the following form, to-wit:

———, ———, *ss:*

This is to certify that (insert the name and occupation) a native of (insert State and parish of nativity) and a citizen of Louisiana, was duly registered upon his personal application by the undersigned ———, of the (insert parish or ward of city or town) as a resident of the said parish, or of the ——— election precinct of the said ward, on the —— day of ———, anno Domini ——. (In cases where the voter is a resident of the police jury ward, such certificate shall also state the number or name of such ward.)

———, ———,

Supervisor of Registration for the ———.

SEC. 31. *Be it further enacted, &c.*, That it shall be the duty of every supervisor of registration to issue to any registered voter a duplicate certificate, upon his making affidavit that the original has been lost or destroyed; said affidavit to be made on the back of the duplicate so issued.

SEC. 32. *Be it further enacted, &c.*, That the supervisor of registration shall keep an index-book, in which shall be entered alphabetically the names of all registered voters, with the number of their certificate; and also a similar index-book to the names of all persons refused registration, with a proper reference to the folio or number of the same.

SEC. 33. *Be it further enacted, &c.*, That the decision of any supervisor of registration on all questions of erasure from or addition to the registry, and on all questions rela-

tive to the registry of voters, shall be final, and shall not be subject to any revision or correction by any parish or district judge. No parish or district judge shall interfere by writ of injunction, or mandamus, or other order of court, to compel any supervisor or assistant supervisor of registration to register, or prohibit him from registering any person. Any judge so interfering shall, upon conviction thereof, be subject to a fine of not less than five hundred dollars, and imprisonment for not less than six months, and shall be liable to impeachment and removal from office: *Provided*, That nothing herein contained shall be so construed as to deprive any person of any right of action he may lawfully have against any supervisor for any illegal or wrongful refusal to register such person: *And provided further*, That should the State registrar, or any supervisor or assistant supervisor of registration, willfully and maliciously, with intent to deprive any citizen of his right of suffrage, he being entitled thereto, refuse to grant him registry and certificate thereof, after he shall have complied with the requirements of this act, or if said State registrar, supervisor, or assistant supervisor of registration shall maliciously erase the name of any registered voter, who is really entitled to vote, from the lists or records of registered voters with like intent, he shall, if convicted, be deemed guilty of felony, and be liable to imprisonment in the penitentiary for a term not exceeding five years, or to a fine not exceeding five thousand dollars, or to both, and be likewise liable to private action at law by the person injured for exemplary damages.

SEC. 34. *Be it further enacted, &c.*, That any supervisor or assistant supervisor of registration shall have power, while in session, to administer oaths and affirmations; to issue subpœnas to any person within his respective election precinct, requiring the attendance of such person before him as witness; to examine any person, under oath, respecting his own or the qualifications of any other person as an elector, in said election precinct, and to direct the arrest of any person for disorderly conduct before him at his office.

SEC. 35. *Be it further enacted, &c.*, That every person who shall be required by any supervisor or assistant supervisor of registration to prove his residence in any election precinct, may, in addition to his own oath or affirmation, be required to prove, by the affidavit of two qualified electors of the election precinct, whose names are contained on the registration books, that such person is personally known to them, that he is a *bona fide* resident of the election precinct, and they verily believe that he is a qualified voter, entitled to vote at the next election.

SEC. 36. *Be it further enacted, &c.*, That it shall be the duty of the supervisor of registration in each parish of the State, except the parish of Orleans, within ten days after an election, to prepare and forward to the State registrar of voters a list of the voters of his parish registered by him since the last opening of the books in his parish, duly sworn to and certified by him, and then to redeposit the registration-books with the clerk of the court of the parish, taking his receipt for them, which shall be forwarded to the State registrar of votes in New Orleans. If any supervisor or assistant supervisor of registration shall refuse or neglect to perform any of the duties prescribed by this law, he shall, upon conviction, be deemed guilty of a misdemeanor, and shall be sentenced for every such offense to pay a fine not exceeding one hundred dollars, or to undergo an imprisonment not more than one year, or either, or both, at the discretion of the court.

SEC. 37. *Be it further enacted, &c.*, That the governor shall have power to remove any supervisor or assistant supervisor of registration for failure, refusal, neglect, or inability to perform the duties enjoined on him by law.

SEC. 38. *Be it further enacted, &c.*, That whenever there shall be a vacancy in the office of any supervisor of registration or assistant supervisor of registration, from death, removal, failure or refusal to qualify, absence, registration, or other cause, the governor shall fill such vacancy by appointment, or he may indicate some parish officer to discharge the duties of such supervisor or assistant supervisor for the time being, and such officer shall receive the same compensation and have the same powers and duties, and be subject to the same penalties, as are prescribed for supervisors of registration or assistant supervisors of registration, as the case may be.

SEC. 39. *Be it further enacted, &c.*, That if any person, upon any false representation, or by the production of any forged, false, or spurious naturalization certificate, or upon any such certificate not duly issued according to the act of Congress, shall cause his name to be placed, or shall attempt to have his name placed upon any book of registration for election purposes, or upon any list of qualified electors, authorized or required to be made by any law of this State, or shall vote or attempt to vote at any election, every such person, on conviction thereof, shall be adjudged guilty of a misdemeanor, and shall be sentenced to imprisonment in the parish prison for a term of not less than twelve months; and every person who shall aid or abet any other person in any such false representation or attempt, shall, on conviction thereof, be adjudged guilty of misdemeanor and suffer the like penalty.

SEC. 40. *Be it further enacted, &c.*, That if any person shall fraudulently alter, add to, deface, or destroy any list of voters, made out or posted, as directed by this act, or any book of registration, or tear down, or remove the same from the place where it has been

fixed or deposited, with fraudulent or mischievous intent, or for any improper purpose, the person so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five hundred nor less than one hundred dollars, and by imprisonment for not more than twelve nor less than three months.

SEC. 41. *Be it further enacted, &c.*, That it shall be the duty of the supervisor of registration in every parish of this State to appoint one or more suitable persons to attend at each poll or voting place, whose duty it shall be to convey the box to receive the votes to the place of holding the election, and to deliver the same to the commissioners of election, and to attend the commissioners of election during the whole time of holding the election, and to obey all legal orders of such commissioners in keeping order at or near the polls, suppressing riots, or disorder of any kind, and to make all such arrests as may be lawfully ordered by said commissioners. Any person who may resist or oppose such persons in the discharge of their said duties, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and by imprisonment for not less than three months.

SEC. 42. *Be it further enacted, &c.*, That it shall be the duty of the assistant supervisor of registration for each ward in the cities of New Orleans and Jefferson, and in the parishes of Orleans and Jefferson, in making out the alphabetical lists provided for in section eighteen, to classify them under the following heads, to wit:

First. Private householders. Under this head the assistant supervisor of registration shall make out an alphabetical list of the names, occupations, and residences of all private householders residing in each election precinct who are qualified electors, designating the residence by the number of the house, and the name of the street on which it may be located.

Second. Private residents. Under this head the assistant supervisor of registration shall make out an alphabetical list of the names, occupations, and residences of all qualified electors in each election precinct, residing actually at the time with private housekeepers, designating the house by the number and street, as aforesaid.

Third. Residents at and keepers of hotels, taverns, boarding and lodging houses, and restaurants. Under this head the assistant supervisor shall make out an alphabetical list of the names of all qualified electors in each election precinct, residing at or keeping hotels, taverns, boarding-houses, lodging-houses, or restaurants in said election precinct, designating every such hotel, tavern, boarding-house, lodging-house, or restaurant by the number of the house and the name of the street on which it may be located; but he shall not place on said list the name of any person who has not a fixed residence in the election precinct, in accordance with the requirements of the constitution. On the completion of said precinct lists in the manner aforesaid, the assistant supervisor of registration shall make out and deliver to the supervisor of registration for the parish a transcript thereof. Each such transcript shall be verified by an affidavit to be made and subscribed by the assistant supervisor of registration, that the names contained therein are the names of qualified electors residing in the several precincts of his ward, and that every person whose name is contained therein is a qualified elector, having a fixed residence in the precinct, to the best of his information, knowledge, and belief.

SEC. 43. *Be it further enacted, &c.*, That the State registrar of voters shall cause a complete registration to be made of the new parish of Richland, and also for the contiguous parishes of Ouachita, Franklin, Carroll, and Morehouse, out of which said parish was created. There shall also be a complete registration of the new parish of Tangipahoa, and of the contiguous parishes of Washington, Saint Tammany, Saint Helena, and Livingston, out of which said parish of Tangipahoa was created. There shall also be a complete registration of the parish of Grant and of the contiguous parishes of Rapides and Winn, out of which said parish of Grant was created. There shall also be a complete registration of the new parish of Iberia, and of the contiguous parishes of Saint Martin and Saint Mary, out of which the said parish of Iberia was created; and also a new registration of the qualified electors of the First ward of the city of New Orleans. In any new parish which may hereafter be created before any general election, there shall also be a complete registration of such new parish and other contiguous parishes out of which it may be created.

SEC. 44. *Be it further enacted, &c.*, That this act shall take effect from and after its passage, and all laws and parts of laws inconsistent with the provisions thereof, and all laws or parts of laws on the same subject-matter, are hereby repealed.

MORTIMER CARR,
Speaker of the House of Representatives.
OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved March 16, 1870.

H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

GEORGE E. BOVEE,
Secretary of State.

No. 100.

AN ACT to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making, and designate the officers who shall make the returns thereof; to prevent fraud, violence, intimidation, riot, tumult, bribery, or corruption at elections or at any registration or revision of registration; to limit the powers and duties of the sheriffs of the parishes of Orleans and Jefferson; to prescribe the powers and duties of the board and officers of the metropolitan police in reference to elections; to prescribe the mode of entering on the rolls of the senate and house of representatives the names of members; to empower the governor to preserve peace and order, to enforce the laws; to limit the powers and duties of the mayors of the cities of New Orleans and Jefferson with regard to elections; to prohibit district or parish judges from issuing certain writs to commissioners of elections; to make an appropriation for the expenses of the next revision of the registration and of the next election, and to enforce article one hundred and three of the constitution.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That all elections for State, parish, and judicial officers, members of the general assembly, and for members of Congress shall be held on the first Monday in November, and said elections shall be styled the general elections. They shall be held in the manner and form, and subject to the regulations hereinafter prescribed, and no other.

SEC. 2. *Be it further enacted, &c.*, That elections for representatives in the general assembly shall be held on the first Monday of November, one thousand eight hundred and seventy, and every two years thereafter; and all elections to supply the place of senators in the general assembly, whose terms of service shall have expired, shall be held at the same time as herein provided for the election of representatives.

SEC. 3. *Be it further enacted, &c.*, That all elections shall be held in each parish at the several election-polls or voting-places to be established as is hereinafter prescribed.

SEC. 4. *Be it further enacted, &c.*, That all elections shall be completed in one day, and the polls shall be kept open at each poll or voting-place, from the hour of six in the morning until six o'clock in the afternoon.

SEC. 5. *Be it further enacted, &c.*, That each parish in this State, except the parishes of Orleans and Jefferson, is hereby fixed as an election precinct, and the supervisor of registration in each of said parishes shall direct what number of polls or voting-places shall be established in each precinct, fix the places of holding the election, and appoint commissioners of election for each poll or voting-place. In the city of New Orleans each ward shall constitute a precinct, and in the remaining part of the parish of Orleans the supervisor of registration for the said parish shall fix both the precincts and voting-places in each precinct, and in the parish of Jefferson the supervisor of registration shall fix both the precincts and the voting-places in each precinct; in the parishes of Orleans and Jefferson the supervisor of registration of each parish shall appoint commissioners of election therefor, as in other parishes. Any duly registered voter may vote at any poll or voting-place within his precinct.

SEC. 6. *Be it further enacted, &c.*, That the elections at each poll or voting-place shall be presided over by three commissioners of election, residents of the parish, who shall be able to read and write, to be appointed by the supervisor of registration for the parish, who shall, before entering upon the discharge of their duties, take and subscribe the oath or oaths prescribed for State officers. Should only one of the commissioners appointed be present, he shall appoint another, and both together shall appoint a third, and the commissioners so appointed shall take the oath and perform all the duties of commissioners of election in the same manner as if they had been appointed by the supervisor of registration.

SEC. 7. *Be it further enacted, &c.*, That it shall be the duty of the commissioners of election to receive the ballots of all legal voters who shall offer to vote, and deposit the same in the ballot-box to be provided for that purpose. The commissioners shall deposit the ballot of each voter in the ballot-box in the full and convenient view of the voter himself.

SEC. 8. *Be it further enacted, &c.*, That in all cases the vote of the person offering to vote shall be taken from the hand of the voter by one of the commissioners of election, and any commissioner of election receiving a vote from the hands of any person other than the voter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars; and any person taking a vote from a voter for the purpose of handing the same to the commissioner of election shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars: *Provided*, That any voter shall have the right to deposit his own vote in the ballot-box with his own hand.

SEC. 9. *Be it further enacted, &c.*, That any commissioner of election, constable, police officer, or election officer, who shall see any person taking from the hands of a voter his ballot with intent to pass it to the commissioners of election, or attempting so to pass such ballot, shall forthwith arrest such person and convey him at least one quarter of a mile from the polls, and keep him there under guard until the close of the polls.

SEC. 10. *Be it further enacted, &c.*, That the commissioners of election shall preserve order and decorum at the election, and shall commit to prison, or, if at any place over one mile from the parish prison, to the custody of the officer, who shall convey the prisoner to a place at least a quarter of a mile from the polls, any disorderly person or persons for a term not to extend beyond the hour of closing the polls, provided he be permitted to vote before being imprisoned. It shall be the duty of the commissioners of election, or any of them, to issue a warrant forthwith for the arrest of such person or persons, and the officer making the arrest shall commit such person or persons as above provided until the close of the polls. Such warrants may be directed to any sheriff, constable, or police officer, and shall be executed immediately by such officer. As soon as practicable after the closing of the polls, such person or persons shall be brought before the proper magistrate for examination, who shall proceed forthwith to examine the case.

SEC. 11. *Be it further enacted, &c.*, That it shall be the duty of the commissioners of election at each poll or voting-place to keep a list of the names of the persons voting at such poll or voting-place, which list shall be numbered from one to the end, and said lists of voters, with their names and numbers as aforesaid, signed and sworn to as correct by such commissioners, shall be delivered to the supervisor of registration at the same time the box containing the ballots is delivered to him.

SEC. 12. *Be it further enacted, &c.*, That any commissioner of election shall have power to administer oaths and affirmations to persons offering to vote at any election conducted by them, and to examine such persons, under oath, touching their right to vote at such election; and in all cases the supervisor of registration for the parish shall appoint one of the commissioners of election to keep a record of the voters during the election, and another to receive the votes, and whenever a vote is received, the commissioner of election keeping the record shall call the name of the voter aloud, and shall mark the letter "V" opposite said name on the record.

SEC. 13. *Be it further enacted, &c.*, That all supervisors of registration, assistant supervisors of registration, commissioners of election, and officers attending supervisors of registration or commissioners of election, shall be free from arrest during the time of registration or of the revision of the registration, or of holding the election, or in going to or returning from the place of registration, or poll or voting-place, unless he or they shall be charged with an offense punishable with death or imprisonment in the penitentiary.

SEC. 14. *Be it further enacted, &c.*, That each commissioner of election shall receive as compensation the sum of five dollars per day for the number of days he is actually employed in the discharge of the duties of his office, for which he shall make a written and specific account, which shall be examined, and, if found correct, shall be approved and countersigned by the supervisor of registration of the parish and by the governor, and upon presentation of such account to the auditor of public accounts, said auditor shall issue his warrant upon the treasurer for the amount named therein. All proper expenses incurred for the rent of polling or voting-places, and the hire of such furniture and incidental expenses necessary for the holding an election shall be paid by the city or parish authorities in which the elections are held, upon the presentation of a detailed account, duly sworn to and approved by the supervisors of registration for the parish.

SEC. 15. *Be it further enacted, &c.*, That any person duly appointed as a commissioner of election, who shall refuse or fail to serve as such, shall be fined in the sum of one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 16. *Be it further enacted, &c.*, That no person shall be permitted to vote at any election to be held in this State who has not been duly registered as a qualified voter in accordance with law.

SEC. 17. *Be it further enacted, &c.*, That any voter shall vote in the parish wherein he resides, except in the parishes of Orleans and Jefferson, wherein he shall vote at the election precinct in which he shall be a registered voter.

SEC. 18. *Be it further enacted, &c.*, That all the names of persons voted for by each voter shall be written or printed on one ticket, on which the names of the persons voted for, together with the office for which they are voted for, shall be accurately specified; and should two (2) or more tickets be folded together, the tickets so folded shall be rejected. The commissioners of election shall require every person offering to vote to exhibit his certificate of registration, and when the vote of such person is received, the commissioners of election shall write on or stamp on such certificate or affidavit the word "voted," and the date of the vote, which shall be signed by one of the commissioners; and any person being guilty of erasing or altering any stamp or mark thus made by the commissioners of election, or any one of them, shall upon conviction be deemed guilty of a misdemeanor, and fined and imprisoned at the discretion of the court.

SEC. 19. *Be it further enacted &c.*, That the commissioners shall have the right to require that any person attempting to vote shall be put on his oath, and made to

declare whether he has voted at another poll or voting-place, and in case such person shall make a false oath, he shall be subjected to the penalties provided by law for perjury. And it is hereby made the duty of any commissioner of election, upon the request of any voter, to administer the oath herein required, and any commissioner of election refusing or neglecting to administer the oath, when so requested, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, and by imprisonment for a term of not less than three months.

SEC. 20. *Be it further enacted, &c.*, That any person offering to vote may be required by the commissioners to make oath and declare that he is the person to whom was issued the registration certificate, or other paper upon which he offers to vote, and that he has not voted at any other poll or voting-place; and in case he shall make a false oath, he shall be liable to the pains and penalties of perjury prescribed by law.

SEC. 21. *Be it further enacted, &c.*, That the supervisor of registration for each parish throughout the State shall furnish to the commissioners of election, at each poll or voting-place within his parish, a written or printed list, in alphabetical order, of all the registered voters, and the number of the certificate of registration of each voter of the precinct in which the poll or voting-place may be situated; and it shall be the duty of the commissioners of election, as soon as a voter has deposited his vote, to erase his name from said list. Any person, except a commissioner of election, who shall mark, disfigure, or erase any part of said list, shall be immediately arrested and confined until the close of the polls. It is made the duty of all supervisors and assistant supervisors of registration, commissioners of election, and public officers, to enforce the penalty of this section.

SEC. 22. *Be it further enacted, &c.*, That the police jury of each parish in the State, except the parish of Orleans, shall furnish to the supervisor of registration as many ballot-boxes as may be requisite for the holding of all elections in the parish, and in the parish of Orleans it shall be the duty of the common council of the city of New Orleans to furnish the supervisor of registration as many ballot-boxes as may be necessary for the holding of all elections in the parish.

SEC. 23. *Be it further enacted, &c.*, That it shall be the duty of the supervisor of registration of each parish to provide for each election poll or voting-place within the parish one suitable ballot-box, at the expense of the parish, if not furnished by the parish.

SEC. 24. *Be it further enacted, &c.*, That it shall be the duty of the supervisor of registration in each parish, at least ten days before any election, to cause to be printed and posted up in conspicuous places throughout his parish, and at or near the polls or voting-places, a sufficient number of copies of the provisions of this law imposing penalties for offenses against the freedom and purity of elections.

SEC. 25. *Be it further enacted, &c.*, That the State registrar of voters shall furnish to all supervisors of registration all printed blanks and instructions, in conformity with this act, which may be necessary for conducting elections and making returns thereof, which shall be printed by some person to be appointed by the governor, lieutenant-governor, and speaker of the house of representatives, and paid for at the rates allowed for the State printing. The printing shall be measured and approved by the officers aforesaid, and the auditor of public accounts shall issue his warrants therefor upon the State treasurer only when so approved, in such sums as may be convenient, of not less than fifty dollars nor more than one hundred dollars each.

SEC. 26. *Be it further enacted, &c.*, That all elections held in this State to fill any vacancies shall be conducted and managed, and returns thereof shall be made in the same manner as (*if*) [is] provided for general elections.

SEC. 27. *Be it further enacted, &c.*, That the supervisor of registration for the parish shall conduct all city, town, parish, or charter elections which may be held in his parish, and forward statements thereof to the returning officers in the same manner and form as is prescribed for general elections.

SEC. 28. *Be it further enacted, &c.*, That the governor shall commission all officers elect, except members of the general assembly and the governor.

SEC. 29. *Be it further enacted, &c.*, That in any parish, precinct, ward, city, or town, in which during the time of registration or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, armed disturbance, bribery or corrupt influences, at any place within said parish, or at or near any poll or voting place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences occur on the day of election, or of the supervisor of registration, or any assistant supervisor of registration of the parish, if they occur during the time of registration or revision of registration, to make in duplicate, and under oath, a clear and full statement of all the facts relating thereto,

and of the effect produced by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified electors deterred by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, from registering or voting, which statement shall also be corroborated, under oath, by three respectable citizens, qualified electors of the parish.

When such statement is made by a commissioner of election or assistant supervisor of registration, he shall forward both copies to the supervisor of registration, immediately on the close of the election. The supervisor of registration shall forward one copy of all such statements, whether made by himself or by a commissioner of election, or by an assistant supervisor of registration, to the governor, and shall deposit one copy with the clerk of a district court of the parish.

SEC. 30. *Be it further enacted, &c.*, That no parish or district judge shall interfere, by writ of injunction or mandamus, or order of court, to compel any commissioner of election to do any act, or prohibit him from doing any act in his official capacity as commissioner of election, or relating in any manner to the conduct of the election. Any judge so interfering shall be guilty of a misdemeanor in office, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and imprisonment in the parish prison for not less than three months: *Provided*, That nothing in this section shall be so construed as to exempt any commissioner from a suit for damages or prosecution for violation of the law.

SEC. 31. *Be it further enacted, &c.*, That it shall be the duty of the governor to cause the attorney-general, or, in case of his failure or refusal, to employ competent counsel to prosecute any judge who shall violate the provisions of the foregoing section of this act. In the parish of Orleans such prosecutions shall be before the district court having criminal jurisdiction. Whenever the judge of a district court having jurisdiction of such prosecutions shall be prosecuted for such an offense, the governor shall appoint some practicing attorney to prosecute the cause. Any attorney so employed as above directed by the governor shall, for each successful prosecution in which he shall have been engaged, receive as compensation a sum to be fixed by the governor, the judge of a district court, and two judges of the supreme court, which shall be paid to him upon the warrant of the governor and such judges, out of any funds in the treasury not otherwise appropriated.

SEC. 32. *Be it further enacted, &c.*, That all general elections for members of Congress shall be held at the same time, and conducted in the same manner, as is provided for the general elections.

SEC. 33. *Be it further enacted, &c.*, That as soon as possible after the expiration of the time of making the returns of the election for representatives in Congress, a certificate of the returns of the election for such representatives shall be entered on record by the secretary of state and signed by the governor, and a copy thereof, subscribed by said officers, shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Clerk thereof.

SEC. 34. *Be it further enacted, &c.*, That in case of vacancy by death or otherwise in the said office of representatives in Congress, between the general elections, it shall be the duty of the governor, by proclamation, to cause an election to be held according to law, to fill the vacancy.

SEC. 35. *Be it further enacted, &c.*, That in every year in which an election shall be held for electors of President and Vice-President of the United States, such election shall be held on the Tuesday next after the first Monday in the Month of November, in accordance with an act of the Congress of the United States, approved January twenty-third, one thousand eight hundred and forty-five, entitled "An act to establish a uniform time for holding elections for electors of President and Vice-President, in all States of the Union;" and such elections shall be held and conducted, and returns made thereof, in the manner and form prescribed by law for the general elections.

SEC. 36. *Be it further enacted, &c.*, That whever the seat of any Senator or Representative shall become vacant, and there shall be a session of the general assembly then sitting, or to be held before the next general election, it shall be the duty of the governor, within five days after being officially informed of such vacancy, to issue his writ of election, directed to the supervisors of registration in and for the parish or parishes in which such vacancy may exist, whose duty it shall be, within three days after its receipt, to give public notice that an election will be held to fill such vacancy on a day to be named by them, which day shall not be less than eight nor more than fifteen days after the publication of such notice, if such election be held during or within fifteen days next preceding a session of the general assembly; but if not, then the election shall be held not less than twenty nor more than thirty days after the publication of such notice, and shall be held and conducted, and returns thereof made, in the manner and form provided by law for general elections.

SEC. 37. *Be it further enacted, &c.*, That in all future elections for Senators, Representatives, sheriffs, coroners, clerks of district courts, and other officers, if there should be

an equal number of votes given to two or more candidates for the same office, the election of such office or offices thus not filled shall be again returned to the people in the parish or district, as the case may be, public notice of ten days to be first given in the same manner as in the general elections.

SEC. 38. *Be it further enacted, &c.*, That the provisions of this act, except as to the time of holding elections, shall apply in the election of all officers whose election is not otherwise provided for.

SEC. 39. *Be it further enacted, &c.*, That it shall be the duty of the governor, at least six weeks before every general election, to issue his proclamation, giving notice thereof, which shall be published in the official journal of the State, and copies thereof forwarded to the several supervisors of registration throughout the State.

SEC. 40. *Be it further enacted, &c.*, That notice of every general election held under the provisions of this act shall be given at least thirty days before the election, by notices posted up in each precinct, or, if there be an official newspaper published in the parish, by publishing the notice in such paper.

SEC. 40. *Be it further enacted, &c.*, That the supervisors of registration, or commissioners of election, shall, on the day of election, close all drinking-saloons, dram-shops, groggeries or places where liquor is sold by the glass or bottle, situated within a radius of two miles of any poll or voting-place; and said supervisors or commissioners of election shall have the power to call on any sheriff, constable, or police-officer to enforce this regulation. If such sheriff, constable, or police-officer shall refuse to obey any order issued under the authority of this section, the commissioner or supervisor giving the order shall summarily arrest and imprison such sheriff, constable, or police-officer, such imprisonment not to extend beyond the hour of closing the polls. And such sheriff, constable, or police-officer so refusing to obey such order shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, shall be punished by imprisonment for a term not to exceed six months, nor less than three months, and by a fine of not more than five hundred dollars, nor less than one hundred dollars.

SEC. 42. *Be it further enacted, &c.*, That the governor, any justice of the peace, alderman, mayor, judge, or any State officer who may be present at, or have knowledge of any drinking-saloon, dram-shop, groggery, or place where liquor is sold by the glass or bottle, which is open contrary to the provisions of the foregoing section within the limits therein prescribed, may in writing order any police-officer or constable to seize any such liquors, or any carriages or vessels containing the same, or any booths or tents erected within said limits for the purpose of exposing such intoxicating liquors for sale.

SEC. 43. *Be it further enacted, &c.*, That the constable or police-officer to whom such order shall be delivered, shall thereupon seize all such liquor, carriages, vessels, and the materials of any such tent or booth and hold and detain the same until twenty-four hours after the close of the election, then to be delivered on demand to the owner or the person from whom they were taken, on the payment of ten dollars for the safe keeping of said articles.

SEC. 44. *Be it further enacted, &c.*, That if these effects be not thus demanded, the same shall be sold at public auction by the police-officer or constable making the seizure, and the proceeds of such sale, after deducting costs of sale and safe-keeping, shall be paid to the owner of the articles sold, or the person from whom the same were taken.

SEC. 45. *Be it further enacted, &c.*, That no voter whose name is registered according to law shall be challenged at the polls on any question of residence, but it shall be the duty of the commissioners of elections to require every person whose name appears on the registation-books to prove his identity if required by the commissioners of election; and any commissioner of election who shall receive a second vote on the same day by virtue of the same certificate of registration, and any person who shall offer to vote a second time upon any certificate of registration, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined or imprisoned, or both, at the discretion of the court, but the fine shall not exceed one hundred dollars in each case, nor the imprisonment one year, and the like punishment shall, on conviction, be inflicted on any commissioner of election who shall neglect or refuse to make the indorsement required as aforesaid, on the said registration certificate.

SEC. 46. *Be it further enacted, &c.*, That if any clerk of a court, or deputy of any such clerk, or any other person, shall affix the seal of office to any naturalization paper or permit the same to be affixed, or give out, or cause or permit the same to be given out, in blank, whereby it may be fraudulently used, or furnish a naturalization certificate to any person who shall not have been duly examined and sworn in open court, in the presence of some of the judges thereof, according to the act of Congress, or shall aid in, connive at, or in any way permit the issue of fradulent naturalization certificates, he shall be guilty of a misdemeanor; or if any one shall fraudulently use any such certificate of naturalization, knowing it to have been fraudulently issued, or shall vote, or attempt to vote thereon, or if any one shall vote, or attempt to vote, on any certificate of naturalization not issued to him, he shall be guilty of a misdemeanor; and either or any of the persons, their aiders or abettors, guilty of either of the misdemeanors

aforesaid, shall, on conviction, be fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a period not exceeding three days.

SEC. 47. *Be it further enacted, &c.*, That if any person, on oath or affirmation, in or before any court in the State, or officer authorized to administer oaths, shall, to procure a certificate of naturalization for himself or any other person, willfully depose, declare or affirm, any matter to be fact, knowing the same to be false, or shall in like manner deny any matter to be fact, knowing the same to be true, he shall be deemed guilty of perjury, and any certificate of naturalization issued in pursuance of any such deposition or affirmation shall be null and void; and it shall be the duty of the court issuing the same, upon proof being made before it that it was fraudulently obtained, to take immediate measures for recalling the same for cancellation; and any person who shall vote, or attempt to vote, on any paper so obtained, or who shall in any way aid it, connive at, or have any agency whatever in the issue, circulation, or use of any fraudulent naturalization certificate, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall undergo an imprisonment in the penitentiary for not more than two years, and pay a fine, not more than one thousand dollars for every such offense, or either or both, at the discretion of the court.

SEC. 48. *Be it further enacted, &c.*, That at all general elections the names of all candidates to be voted for in the cities of New Orleans and Jefferson shall be written or printed on one ticket, or slip of paper, and the number of the ward and election precinct in which the ticket is to be voted shall be printed or written on the outside fold thereof.

SEC. 49. *Be it further enacted, &c.*, That the supervisors of registration in the parishes of Orleans and Jefferson shall, during registration, and at least within six days preceding any general election, furnish to the board of metropolitan police commissioners a copy of the lists of registered voters in each precinct in said parishes.

SEC. 50. *Be it further enacted, &c.*, That the board of metropolitan police commissioners shall forthwith proceed by means of the police to inquire into and report to said supervisors the names of all persons falsely, fraudulently, or improperly registered; and to this end the board of metropolitan police commissioners shall divide each ward into convenient subdivisions or blocks, and shall assign to each subdivision one or more police officers, whom they shall direct and cause to compare the names of the actual residents of said subdivisions or blocks with the names of the registered voters thereof, and to report to them the names of all persons whom they shall find to befalsely, fraudulently, or improperly registered, and the board of metropolitan police commissioners shall report the same in an alphabetical list, with the names and residences thereof as registered, to the supervisors of registration of said parishes of Orleans and Jefferson, respectively, who shall immediately make publication thereof in the official journal of the State, with notice to all such persons to appear forthwith at the office of the supervisor of registration of said parishes, respectively, and show cause why their names should not be erased from the registry list. If any such person shall appear and show to the satisfaction of the supervisor of registration that he has been unjustly reported as falsely, fraudulently, or improperly registered, or show other sufficient cause why his name should remain on the registry list, his name shall not be erased; otherwise the supervisor of registration shall cause all names so reported to be erased from the registry list, and no person whose name is so erased shall vote at that election.

SEC. 51. *Be it further enacted, &c.*, That the mayors of the cities of New Orleans and Jefferson are hereby prohibited from appointing commissioners or (*thair*) [other] officers to hold or conduct any election whatever, and from doing any act toward the holding or conducting of any election. Any mayor who shall do any act contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be punished by imprisonment for not less than three months, and by a fine of not less than three hundred dollars. Any citizen may prosecute any person violating this section.

SEC. 52. *Be it further enacted, &c.*, That it shall be unlawful for the sheriffs of the parishes of Orleans, Jefferson, and Saint Bernard, or either of them, to appoint any deputies to conduct or in any manner to interfere with the elections in said parishes, or to station any deputies or their officers at any poll or voting-place or at any office of registration, for the purpose of receiving or carrying the ballot-boxes, or to do any act toward conducting the elections, or toward maintaining or preserving the peace on the day of election. The whole care of the peace and order of the cities of New Orleans, Jefferson, and Carrollton, and in the parishes of Orleans, Jefferson, and Saint Bernard, on the days of election, shall be in the charge of the metropolitan police, subject to the orders of the governor. Any sheriff who shall do any act contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be removed from office, and be imprisoned for not less three months, and be fined not less than three hundred dollars. Any citizen may prosecute any person violating the provisions of this section.

SEC. 53. *Be it further enacted, &c.*, That immediately upon the close of the polls on the day of election, the commissioners of election at each poll or voting-place shall seal

the ballot-box by pasting slips of paper over the key-hole and the opening in the top thereof, and fastening the same with sealing-wax on which they shall impress a seal, and they shall write the names of the commissioners on the said slips of paper; they shall forthwith convey the ballot-box so sealed to the office of, and deliver said ballot-box to, the supervisor of registration for the parish, who shall keep his office open for that purpose from the hour of the close of the election until all the votes from the several polls or voting places of the precinct shall have been received and counted. The supervisor of registration shall immediately upon the receipt of said ballot-box note its condition and the state of the seals and fastenings thereof, and shall then, in the presence of the commissioners of election and three citizens, freeholders of the parish for such poll or voting-place, open the ballot-box and count the ballots therein, and make a list of all the names of the persons and offices voted for, the number of votes for each person, the number of ballots in the box, and the number of ballots rejected, and the reason therefor. Said statement shall be made in triplicate, and each copy thereof shall be signed and sworn to by the commissioners of election of the poll and by the supervisor of registration. As soon as the supervisor of registration shall have made the statement above provided for, for each poll in his precinct or parish, and it shall have been sworn to and subscribed as above directed, the supervisor of registration shall inclose in an envelope of strong paper or cloth, securely sealed, one copy of such statement from each poll and one copy of the list of persons voting at each poll, and one copy of any statements as to violence or disturbance, bribery, or corruption, or other offenses specified in section twenty-nine of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes, and shall send such package by mail, properly and plainly addressed, to the governor of the State. The supervisor of registration shall send a second copy of said statement to the governor of the State by the next most safe and speedy mode of conveyance, and shall retain the third copy in his own possession.

SEC. 54. *Be it further enacted, &c.*, That the governor, the lieutenant-governor, the secretary of state, and John Lynch, and T. C. Anderson, or a majority of them, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation or otherwise by either of the board, then the vacancy shall be filled by the residue of the board of returning-officers. The returning-officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning-officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: So help me God."

Within ten days after the closing of the election, said returning-officers shall meet in New Orleans to canvass and compile the statements of votes made by the supervisors of registration, and make returns of the election to the secretary of state. They shall continue in session until such returns have been completed. The governor shall at such meeting open, in the presence of the said returning-officers, the statements of the supervisors of registration, and the said returning-officers shall, from said statements, canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and offices voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers until set aside, after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected.

The governor shall within thirty days thereafter issue commissions to all officers thus declared elected who are required by law to be commissioned.

SEC. 55. *Be it further enacted, &c.*, That in such canvass and compilation the returning-officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free and peaceable registration and election. Whenever from any poll or voting-place there shall be received the statement of any supervisor of registration, assistant supervisor of registration, or commissioner of election, in form as required by section twenty-nine of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented or tended to prevent a fair, free, and peaceable and full vote of all qualified electors entitled to vote at such poll or voting-place, such returning-officers shall not canvass, count, or compile the statement of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning-officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery or corrupt influences at any such poll or voting-

place, and if from the evidence of such statements they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning-officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning-officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning-officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting, to materially change the result of the election, then the said returning-officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns. The returning-officers may appoint such clerks as may be necessary, for a length of time not to exceed thirty days, who shall be paid $5 per day each for the time actually served, which time shall be specified in a written account, subscribed and sworn to by such clerk, and approved by the returning-officers. The auditor of public accounts shall issue his warrant upon the treasury for the amount of such account so subscribed and sworn to and approved.

SEC. 56. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last general assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the general assembly, and it shall be the duty of said clerk and secretary to place the names of the representatives and senators-elect, so furnished, upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article thirty-four of the constitution of the State.

SEC. 57. *Be it further enacted, &c.*, That should any of the returning-officers named in this act be a candidate for any office at any election he shall be disqualified to act as returning-officer for that election, and a majority of the remaining returning-officers shall summon some respectable citizen to act as returning-officer in place of the one so disqualified.

SEC. 58. *Be it further enacted, &c.*, That any civil officer or other person who shall assume or pretend to act in any capacity as a commissioner or other officer of election, to receive or count votes, to receive returns or ballot-boxes, or to do any other act toward the holding or conducting of elections, or the making returns thereof, in violation of or contrary to the provisions of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not to exceed three years nor less than one year, and by a fine not exceeding three hundred dollars nor less than one hundred dollars.

SEC. 59. *Be it further enacted, &c.*, That any person or persons who shall obstruct, hinder, or by violence or threats of violence, abusive language, or other species of intimidation, interfere with a supervisor or assistant supervisor of registration or commissioner of election, or with any person or persons duly appointed to execute orders of the supervisor of registration or commissioners of elections in the discharge of their duties, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding three hundred dollars nor less than one hundred dollars, and by imprisonment for a period not exceeding three months nor less than one month.

SEC. 60. *Be it further enacted, &c.*, That any person or persons who shall counsel, aid, connive at, abet, encourage, or participate in any riots, tumults, acts of violence, intimidation, or armed disturbance at or near the office of any supervisor or assistant supervisor of registration, on any day of registration or revision of registration, or at or near any poll or voting-place, on any day of election, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period not exceeding two years nor less than six months.

SEC. 61. *Be it further enacted, &c.*, That any person who shall register or cause to be registered his name, or that of any other person, as a legal voter, in violation of law, or vote, or induce or cause another to vote, in violation of the laws, or of the constitutional provisions in such cases made and provided, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period not less than one year nor more than three years.

SEC. 62. *Be it further enacted, &c.*, That any person or persons who shall purchase or cause to be purchased the registration-papers or certificate of registration of any person duly registered according to law, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a term not less than one year nor more than three years.

SEC. 63. *Be it further enacted, &c.*, That any person who shall vote or attempt to vote on any false or fraudulent paper or certificate of registration, or upon any paper or certificate of registration issued to a person other than the one voting or attempting to vote on said paper or certificate of registration, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a term not less than one year nor more than three years.

SEC. 64. *Be it further enacted, &c.*, That any person who shall induce, by offer of reward, by threats of violence, or otherwise, any person to vote or attempt to vote on any false or fraudulent paper or certificate of registration, or upon any papers or certificate of registration belonging to a person other than the one voting or attempting to vote on said paper or certificate of registration, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period not exceeding three years nor less than one year.

SEC. 65. *Be it further enacted, &c.*, That any person who shall vote or attempt to vote more than once at the same election shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and by imprisonment in the penitentiary for a term of not less than three years.

SEC. 66. *Be it further enacted, &c.*, That it shall be the duty of any commissioner of election to forthwith arrest any person who shall vote or attempt to vote more than once, and commit him to the parish prison, and to immediately file an information against such person with the district attorney or district attorney *pro tempore*, whose duty it shall be to prosecute such person before the proper court: and upon his failure so to do, the attorney-general shall appoint some attorney to prosecute such person, and also to prosecute such district attorney or district attorney *pro tempore* for such failure. Any supervisor of registration, commissioner of election, district attorney, or district attorney *pro tempore* who shall refuse, neglect, or fail to comply with the provisions of this section of this act, shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be removed from office, and punished by a fine of not less than one hundred dollars, and imprisonment for not less than three nor more than six months.

SEC. 67. *Be it further enacted, &c.*, That any person who shall, by threats of discharge from employment, of withholding wages, or proscription in business, influence or attempt to influence any voter in the casting of his vote at any election, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, which shall go to the school fund of the parish, and by imprisonment in the parish prison for not less than three months.

SEC. 68. *Be it further enacted, &c.*, That any person who shall discharge from his employment any laborer, employé, tenant, or mechanic, who shall have been working for such person under contract, written or oral, for a specified time before such time shall have expired, or who shall withhold from any laborer, employé, tenant, or mechanic any part of the wages due to such laborer, employé, tenant, or mechanic, on account of any vote which such laborer, employé, tenant, or mechanic has given or purposes to give, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than five hundred dollars, one-half of which shall go to the school fund of the parish in which the offense was committed, and by imprisonment in the parish prison for not less than three months.

SEC. 69. *Be it further enacted, &c.*, That any person who shall molest, disturb, interfere with, or threaten with violence, any commissioner of election or person in charge of the ballot-boxes, while in charge of the same, between the time of the close of the polls and the time that said ballot-boxes are delivered to the supervisor of registration, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary not less than one year, or both, at the discretion of the court.

SEC. 70. *Be it further enacted, &c.*, That any person not authorized by this law to receive or count the ballots at an election who shall, during or after any election, and before the votes have been counted by the supervisors of registration, disturb, displace, conceal, destroy, handle, or touch any ballot, after the same has been received from the voter by a commissioner of election, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars, or by imprisonment for not less than six months, or both, at the discretion of the court.

SEC. 71. *Be it further enacted, &c.*, That any person not authorized by this law to take

charge of the ballot-boxes at the close of the election who shall take, receive, conceal, displace, or [in] any manner handle or disturb any ballot-box at any time between the hour of the closing of the polls and the transmission of the ballot-box to the supervisor of registration, or during such transmission, or at any time prior to the counting of the votes by the supervisor of registration, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary not less than one year, or both, at the discretion of the court.

SEC. 72. *Be it further enacted, &c.*, That if any person shall, by bribery, menace, willful falsehood, or other corrupt means, directly or indirectly attempt to influence any elector of this State in the giving his vote or ballot, or to induce him to withhold the same, or disturb or hinder him in the free exercise of the right of suffrage at any election in this State, he shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five hundred dollars, and be imprisoned in the parish prison for a term not exceeding six months, and shall also be ineligible to any office in the State for the term of two years.

SEC. 73. *Be it further enacted, &c.*, That it shall be unlawful for any person to carry any gun, pistol, bowie-knife, or other dangerous weapon, concealed or unconcealed, on any day of election during the hours the polls are open, or on any day of registration or revision of registration, within a distance of one-half mile of any place of registration or revision of registration; any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars, and by imprisonment in the parish jail for not less than one month: *Provided*, That the provisions of this section shall not apply to any commissioner or officer of the election, or supervisor or assistant supervisor of registration, police officer, or other person authorized to preserve the peace on days of registration or election.

SEC. 74. *Be it further enacted, &c.*, That no person shall give, sell, or barter any spirituous or intoxicating liquors to any person on the day of election, and any person found guilty of violating the provisions of this section shall be fined in a sum of not less than one hundred dollars, nor more than three hundred dollars, which shall go to the school-fund.

SEC. 75. *Be it further enacted, &c.*, That whoever, knowing that he is not a qualified elector, shall vote or attempt to vote at any election, shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 76. *Be it further enacted, &c.*, That whoever shall knowingly give or vote two or more ballots folded as one at any election shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 77. *Be it further enacted, &c.*, That whoever, by bribery or by a promise to give employment or higher wages to any person, attempts to influence any voter at any election, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and by imprisonment in the parish prison for not less than three months.

SEC. 78. *Be it further enacted, &c.*, That whoever willfully aids or abets any one, not legally qualified, to vote or attempt to vote at any election shall be fined in a sum of not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 79. *Be it further enacted, &c.*, That whoever is disorderly at any poll or voting-place during an election shall be fined in a sum not less than twenty dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 80. *Be it further enacted, &c.*, That whoever shall molest, interrupt, or disturb any meeting of citizens assembled to transact or discuss political matters shall be fined in a sum not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction.

Any sheriff, constable, or police officer present at the violation of this section shall forthwith arrest the offender or offenders, and convey him or them, as soon as practicable, before the proper court.

SEC. 81. *Be it further enacted, &c.*, That the court imposing any fine, as directed in sections seventy-four, seventy-five, seventy-six, seventy seven, seventy-eight, seventy-nine, and eighty of this act, shall commit the person so fined to the parish prison until the fine is paid: *Provided*, That said imprisonment shall not exceed six months.

SEC. 82. *Be it further enacted, &c.*, That in cases where any oath or affirmation shall be administered by any supervisor of registration, assistant supervisor of registration or commissioner of election, in the performance of his duty as prescribed by law, any person swearing or affirming falsely in the premises shall be deemed guilty of perjury, and subjected to the penalties provided by the law for perjury.

SEC. 83. *Be it further enacted, &c.*, That the governor shall take all necessary steps to secure a fair, free and peaceable election; and shall, on the days of election, have

paramount charge and control of the peace and order of the State, over all peace and police officers, and shall have the command and direction in chief of all police officers, by whomsoever appointed, and of all sheriffs and constables in their capacity as officers of the peace.

SEC. 84. *Be it further enacted, &c.*, That to defray the expenses of the next revision of registration, and of the next general election, there is hereby appropriated, out of any funds in the treasury not otherwise appropriated, the sum of fifty thousand dollars, or so much thereof as may be necessary.

SEC. 85. *Be it further enacted, &c.*, That all laws or parts of laws contrary to the provisions of this act, and all laws relating to the same subject-matter, are hereby repealed, and that this act shall take effect from and after its passage.

MORTIMER CARR,
Speaker of the House of Representatives.
OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved March 16, 1870.

H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

GEO. E. BOVEE, *Secretary of State.*

EXHIBIT E.

PROCEEDINGS IN THE STATE COURTS.

Injunction issued by Judge Dibble, of the eighth district court, against returning and canvassing board appointed by Governor Warmoth.

NOVEMBER 14.

The following is the original petition filed by the attorney-general in the eighth district court under an act known as the intrusion in office act, to prevent Wharton, Hatch, and Da Ponte, appointed by Governor Warmoth, from acting or assuming to be canvassing officers:

The State of Louisiana, on the relation of the attorney-general, and on the information of the returning-officers of elections, to wit, Henry C. Warmoth, Frank J. Herron, John Lynch, James Longstreet, and Jacob Hawkins, composing the board of said returning-officers, has filed a petition in this court representing that the above-named returning-officers of election are duly qualified as such and for making the returns of the election held in this State on the 4th of November instant; that Jack Wharton, F. H. Hatch, and Durant Da Ponte are pretending to be such returning-officers and attempting to act as such, and are interfering with the above-named returning-officers of election in the discharge of their duties as such officers, and especially with Frank J. Herron, James Longstreet, and Jacob Hawkins, and are intruding into and usurping the office of returning-officer of election, contrary to and in violation of law and the rights of petitioner.

Wherefore the attorney-general prays that said Wharton, Hatch, Da Ponte be cited to answer his petition; and that after all due proceedings they be decreed to be intruders into and usurpers of the office of returning-officers of election; and that Frank J. Herron, James Longstreet, and Jacob Hawkins be decreed to be said returning-officers.

The above petition is signed by Simeon Belden, attorney-general, and A. P. Field and J. Q. A. Fellows, of counsel.

NOVEMBER 15.

On the next day the attorney-general filed the following supplemental petition, asking for an injunction *pendente lite*:

The following supplemental petition of the State of Louisiana, ex rel. attorney-general, on information of F. J. Herron *et al. vs.* Jack Wharton, F. H. Hatch, and Durant Da Ponte, has also been filed.

That all the allegations in the original petition are true, and in addition thereto that the attempt of the said defendants to act in the manner alleged in said petition,

and to act as the returning-officers of elections, and to act as such returning-officer, will defeat the object of this suit, and render nugatory the judgment therein prayed for, and that an injunction is necessary to prevent such a defeat of the objects of this suit, and to prevent the law and the rights of the State and the parties in interest from being violated.

Wherefore petitioner prays for a writ of injunction against defendants, restraining them from sitting as returning-officers of the late election, and from intruding into and usurping the office of returning-officer of elections, and from interfering with Messrs. Herron, Longstreet, and Hawkins in the discharge or performance of their duties.

Judge Dibble has ordered the defendants to show cause on Saturday, the 16th instant, at 11 o'clock a. m., why an injunction should not issue as prayed for. Meanwhile the defendants are ordered to desist from the acts complained of until the hearing and determination of the rule.

The rule *nisi* for injunction came on Saturday, November 16, and was continued to Monday, November 18, and was tried. Judge Dibble ordered the injunction to issue, and pronounced the following oral opinion:

[Extract from New Orleans Times.]

The State of Louisiana, on the information of the board of returning-officers *vs.* Jack Wharton *et als.* The argument of this case has taken a much wider range than the decision of the court need consider. It seems that the issue made between these persons claiming to be returning-officers of election should be determined upon questions of law, aside from any political issue that may urge upon the attention of the court. A petition has been filed by the attorney-general under an act known as the intrusion in office act. It sets forth that H. C. Warmoth, John Lynch, F. J. Herron, Jacob Hawkins, and James Longstreet are, under the provisions of the general-election law, the board of returning-officers of election. It charges that F. H. Hatch, Durant Da Ponte, and Jack Wharton are illegally assuming and exercising the duties and functions of the board of returning-officers, in violation of law. The prayer of the petitioners is that the defendants be decreed to be illegally usurping and unlawfully intruding into these offices, and that there be judgment for the State, declaring that the State and the persons named and joined with the State as plaintiffs be decreed to be the board of returning-officers of election. This petition has simply been filed, and as yet no plea has been made thereto, but a supplemental petition was filed by the attorney-general joining the persons whom he alleges to be the returning-officers, in which he alleges that the defendants are likely to so conduct themselves as to render it impossible for the court to execute its judgment, should it be in favor of the persons joined with the State, and a prayer is made that the injunction issue against these defendants, restraining them from acting as returning-officers *pendente lite*. A rule *nisi* was ordered, and we have heard argument on this application.

To this rule defendants have filed an answer, in which they first plead to the jurisdiction of the court, and, secondly, traverse the facts set up by the State in the petition and supplemental petition. It is insisted by the counsel for the defendants that this court is without jurisdiction in this case, because the persons alleged to be returning-officers and the persons charged with illegally intruding into the said offices are not officers within the meaning of the act known as the intrusion into office act, and that therefore this court has no jurisdiction to determine the issue thus attempted to be made; but the act known as the intrusion into office act was enacted as a substitute for all statutory provisions regulating writs of *quo warranto*, by which intrusion into common law courts inquire into the rights of persons claiming to exercise the functions of office and franchises; and into the statute by which this suit is brought the right is given to inquire into the right of persons to exercise franchises, a word which has a broad significance, and covers the case at bar. These persons were named officers in the election law, and are claiming to exercise important functions, in which the whole State is interested, and in which the whole people of the State are interested, and it is certainly within the province of the attorney-general to inquire into the right of persons claiming to exercise the duties of such offices.

Then passing from the question of jurisdiction, the defendants make issue with the plaintiff upon the questions of fact set up in the petition and supplemental petitions. The act known as the election law provides that all returns of election shall be canvassed and declared upon by a board of returning-officers, to consist of the governor, lieutenant-governor, the secretary of state, and John Lynch, and T. C. Anderson. It was urged by counsel for defendants that the provision of the law naming those gentlemen as returning-officers seems to be in violation of that provision of the constitution which vests in the governor of the State the appointment of officers. But there is a special provision of the constitution which gives to the legislature of the State the

right to take away the power of the governor to appoint officers not vested in him by the constitution.

Then it seems that the law was valid in assuming to name the persons who shall be the returning-officers of the State.

The defendants in this rule insist upon this condition of facts: That on the 12th day of November the board of returning-officers met; that all the members were present, except Thomas C. Anderson; that they adjourned to meet on the following day; that on that day they proceeded to and did declare that Anderson and Pinchback were not qualified to sit on the board by reason of having been candidates at the election; that immediately after this decision Jack Wharton, one of the defendants, came into the room and presented a commission for the office of secretary of state, and exhibited his oath of office; that he was thereupon seated as a member of the returning-board, and that the board as then constituted, consisting of the governor, John Lynch, and Jack Wharton, proceeded to and did elect F. H. Hatch and Durant Da Ponte as members of the returning-board to fill the vacancies existing by reason of the disqualification of Anderson and Pinchback, and that the board is constituted and is now entitled to proceed to canvass the result of the election.

On the other hand, it is insisted by the State, and the persons joined with the attorney-general, that when the board met on the 13th day of November, Mr. Herron was secretary of state, sat on the board as secretary of state, and voted in the board with John Lynch for the election of James Longstreet and Jacob Hawkins to fill the vacancies aforesaid.

Affidavits have been filed pro and con, and from these I gather that, when the board met, Mr. Herron took his seat on the 13th of November, and a resolution ejecting Pinchback and Anderson was adopted; that immediately thereafter Jack Wharton appeared and claimed his seat as secretary of state; that Herron then made a motion to elect Longstreet and Hawkins as members, and that he and Lynch voted, or thought they voted, for that resolution; and about the same time the governor moved for the election of DaPonte and Hatch, and he and Wharton voted for that resolution, or thought they voted for it, and that it was adopted.

It is almost impossible to tell the exact time at which these motions were put, and the theory I have formed of the case renders it unnecessary for me to examine this point.

It seems to me that the case must turn upon two question of law: first, the validity of the commission to Wharton as secretary of state; secondly, upon the validity of the acts of Herron or Wharton, claiming each to be *de facto* secretary of state.

There is no longer any question in the State of Louisiana about the fact that the governor has no power to remove any man from office unless the laws of this State have explicitly vested in him that power in the specific instance in which he attempts to exercise the power. The supreme court has, in a number of instances, stated this doctrine explicitly. Now Herron, on the 13th day of November, was acting secretary of state, whatever that office is, and it seems to me that an attempt on the part of the executive to unconstitutionally exercise his executive will was stricken with absolute nullity from beginning to end. But if the commission issued to Wharton is valid, if the governor had the power to remove a person temporarily occupying that office, and was authorized to commission another person to fill the office, it seems to me still that Herron was *de facto* secretary of state at the time these transactions occurred at the meeting on the 13th of November. The mere issuance of a commission to a person does not constitute him an officer. The doctrine of credence given to acts of *de facto* officers is based on this: that the public has a right to be secure in the validity of acts of officers who, under color of law, exercise functions of office, and have been dealt with and trusted by the public. This is the only reason given by courts for holding valid acts of persons holding office not *de jure* but *de facto*; but in order to consider an act as an act of an officer *de facto* he must be in the actual discharge of the functions of his office, must be known so by the public, and must have been dealt with by the public as a public officer or functionary.

Mr. Herron was *de facto* secretary of state, whether he was so *de jure* or not, on the whole day of the 13th of November. The statutes sent to me are signed by F. J. Herron, secretary of state. All the people have dealt with Herron as secretary of state; and up to that hour, on the 13th day of November, there was not, perhaps, another person, beside the governor, in the State who did not believe Herron to be secretary of state, and who would not have dealt with him as secretary of state if he had had business with that office. The constitution, in article 122, declares, "That all officers shall remain in the discharge of the duties of their respective offices until their successors have been inducted into office, except in cases of impeachment or suspension." There is no evidence to show that Wharton had been inducted into office, and but one moment before, in the vote taken, Mr. Herron had been recognized by the executive as secretary of state, and Herron had been sworn in as a member of the returning-board by the chief justice, in the presence of the governor, and without any objection on his part, although it must have been the fact that at the time the governor permitted the chief justice to swear him in he had issued a commission to Wharton as secretary of

state, but he still recognized Herron as the *de-facto* officer, and he was the *de-facto* officer. Until a person gets a commission and comes in contact with the public, his acts are entitled to no credence and receive no validity from the fact that he has a commission in his pocket.

I therefore consider that, even admitting the commission issued to Wharton is valid, which I do not, Herron was *de facto* acting as secretary of state, and that his vote, with Mr. Lynch's vote, elected those officers to the board.

But much has been said at bar in regard to the acts of the executive in his efforts to defeat the will of the majority of the returning-board, as constituted on the 13th of November, and his acts have been so frequently designated as a brilliant *coup d'état*, that I feel called upon to say that the *coup d'état* is not an American institution: it belongs to another country, where they have barricades, and where they meet to organize governments at midnight. Our Anglo Saxon liberty proceeds under processes of law, and an individual has no power to change the government of the people—that is done by conventions of the people, and the laws are enacted by legislatures elected by the people, and that in daylight, and their proceedings are published to the world, and no person, however great his power, or however pure his motives, has the power to change the nature of our government, or change the progress of its history, or to defeat the will of the people as expressed in their laws.

It was the desire of the legislature when it enacted the election law, that the board of returning-officers should consist of certain persons, and care was taken to select persons representing both political parties, and it was without the power of the executive to defeat this will.

I conclude that the court has jurisdiction to try this case under the intrusion in office act, and that the returning-officers are officers within the meaning of that act. I hold that Herron is still secretary of state; that his vote on the 13th of November determined the election of Longstreet and Hawkins to the board; that at all events, whether he was secretary of state *de jure* or not, he was so *de facto*, and that by his vote Longstreet and Hawkins were selected as members of the board. An injunction may properly issue as a supplemental proceeding to a suit under the intrusion in office act. The object is to decide who is entitled to exercise the duties and functions of the office. The duties of the returning-board are soon completed, and if, pending the issue, the defendants attempt that which renders the suit inoperative, the court may properly issue its restraining order.

From these considerations the rule *nisi* will be made absolute, and the injunction issued as prayed for.

The whole controversy in relation to the returning-board has now been appealed to the supreme court, and will come up for hearing January 13th, as will be seen by the following proceedings:

SUPERIOR DISTRICT COURT.

THE ATTORNEY-GENERAL AND THE RETURNING-BOARD.

Colonel A. P. Field has filed a petition in this court, representing that at the last election held in this State he was duly elected attorney-general, and has been so returned as elected by the returning-board, and commissioned as such.

Colonel Field represents that he is interested in the result of the suit of the State *ex relationi* the attorney-general, on information of returning-officers *vs.* Jack Wharton *et als.*; that the plaintiffs in said suit are the legal returning-officers and board of the election by which he was legally returned as elected; that the judgment in said case is opposed to plaintiff, which jeopardizes the position of petitioner in his said office, whereby he has an interest in having said judgment reversed and set aside.

Wherefore he prays for an appeal suspensive and devolutive to the supreme court.

Hon. B. L. Lynch, judge of the fourth district court, acting in place of Hon. J. Hawkins, judge of the superior district court, has granted an appeal returnable to the supreme court, on the first Monday in January, 1873.

Action of the supreme court of Louisiana on the commissions issued by Governor Warmoth upon returns made by the Wharton board. The court refused to recognize such commissions.

On Saturday, November 24, Mr. H. N. Ogden, to whom Governor Warmoth issued a commission as attorney-general, presented his com-

mission to the supreme court, and asked to be recognized. The court refused to recognize him. The following is an account published in the court reports of the New Orleans Republican:

SUPREME COURT.

Mr. H. N. Ogden, commissioned as attorney-general, called on Mr. Belden on Thursday, and during that day and Friday the latter was busy in making a transfer of the office. Yesterday morning the late attorney-general introduced Mr. Ogden as his successor, and presented his commission.

The court, through Chief Justice Ludeling, stated that the application for recognition would be taken under advisement, and requested Mr. Ogden to present authorities in support of his application. No action will be taken before the next sitting of the court, which will take place on the 2d of December.

This application was never passed upon.

The validity of the commissions issued by Governor Warmoth to persons returned by the board appointed by him, has not come directly before the supreme court; but, as evidence that the supreme court did not recognize such commissions, attention is called to the fact that Sheriff Sanirnet was continually recognized as the sheriff of the court notwithstanding the commission issued by Warmoth to W. P. Harper, who was returned by his board.

December 19 Governor Pinchback issued a commission to Mr. Harper, who was regularly returned by the Lynch board, whereupon Mr. Harper presented his commission to the supreme court and was formally recognized. The following account is given in the New Orleans Republican:

SUPREME COURT.

Sheriff Harper, through his counsel, applied yesterday to the supreme court to be recognized as the civil sheriff for the parish of Orleans.

Upon examination of his bond by the court, it was observed that it had been approved by the recorder of mortgages anterior to the date of the commission presented for the inspection of the court.

The commission is issued by Acting Governor P. B. S. Pinchback.

The court took occasion to notify Mr. Harper that should he present the bond in proper form, and as required by law, he would be recognized as civil sheriff.

The court remarked that they did not recognize his official capacity before the date of his last commission, issued by Governor Pinchback.

Attorney-General A. P. Field was duly commissioned by Governor Pinchback, and was formally recognized by the supreme court, December 17. The following editorial account of such action appeared in the New Orleans Republican, December 18:

Attorney-General Field yesterday presented his commission to the supreme, the superior, and the first district courts, by all of which he was readily and courteously recognized. In the two first-named tribunals there was nothing beyond the ordinary proceedings in such cases, but on presenting the commission to Judge Abell, that veteran jurist embraced the opportunity to indulge in some reflections upon the situation. Colonel Field was accompanied by John Ray, esq., ex-Attorney-General Belden, ex-Judge Duvigneaud, and a number of other old members of the bar, who appeared as his personal and professional friends upon the occasion. Judge Abell ordered the commission to be spread upon the minutes of the court, at the same time expressing his gratification that he was to be brought into such close official connection with a man whom he had known and respected so long as he had Colonel Field. Their first acquaintance dated back more than a quarter of a century, and their intercourse had been uniformly pleasant. To this the attorney-general responded by complimenting Judge Abell as an impartial and honest jurist, and one in whose hands the interests committed to him by the State were safe. After some further interchange of compliments and a few suggestions in regard to old cases on the docket, the interview terminated.

Judge Abell yesterday applied to Governor Pinchback for his commission, which was readily given. Thus we understand that all the law-officers elect of the parish now hold commissions in proper form, and are entitled to the obedience and respect due to their respective positions.

Governor Warmoth's seizure of the courts in New Orleans.

It became necessary for Governor Warmoth to seize possession of the eighth district court and the sheriff's office. Accordingly, November 21, he issued commissions to W. A. Elmore, as judge of the said court, and to W. P. Harper, sheriff, and to other officers. At that time no returns had been made at all. Warmoth, before the United States court, swore that he issued the commissions upon "general notoriety" of the elections of the persons commissioned.

On the morning of November 22, Elmore proceeded with an armed mob, and seized the eighth district court before the hour to which the court had adjourned. At the hour of eleven Judge Dibble arrived with Sheriff Sauinuet, whom he directed to open the court. Both judge and sheriff were then forcibly ejected by the mob under the direction of Elmore. Judge Dibble at all times subsequently claimed to be judge of the court. The following letter addressed by him to Elmore explains itself:

Judge Dibble to Judge Elmore.

NEW ORLEANS, *December* 3, 1872.

SIR: In order that there may be no misapprehension of my position, I hereby give you notice that I still claim to be judge *de jure* and *de facto* of the eighth district court for the parish of Orleans. I am now restrained by overpowering force from exercising the functions of my office: but at the proper time, when the constitution and the laws are respected and obeyed or enforced, I will resume the discharge of my duties. Meanwhile, I consider all acts done by you under assumption of judicial authority as *coram non judice*.

If, when the results of the recent election are legally ascertained, you are found to have been chosen to the office, I will be the first to recognize you.

Very respectfully,

HENRY C. DIBBLE.

HON. W. A. ELMORE.

And the following:

[Communicated.]

LETTER FROM JUDGE DIBBLE TO THE TIMES.

NEW ORLEANS, *December* 5, 1872.

Editor New Orleans Times:

Your correspondent, who assumes to criticise my letter to Judge Elmore, is mistaken in every particular where he attempts to show that I have done anything which could be construed into an abandonment of my claim. I did not apply to the supreme court for a writ of prohibition. I did not consent that any one should make such an application for me, and no such application was made in my name or in my behalf. On the contrary, I advised that such an application ought not to be made, knowing that the supreme court is without jurisdiction to issue the writ, except in immediate aid of its appellate jurisdiction. I made no agreement with Judge Elmore to submit any such question. I stated to him that if the superior courts would sustain his action, I would acquiesce, but until then I should claim to be the judge.

I have not appeared as counsel or attorney in the eighth district court, or in any other court, either to move for a continuance or for any other proceeding. An application for a writ or mandamus against me, as president of the school board, was pending in the eighth district court. I refused to appear personally to make any motion in the case, even in my own behalf.

I have never stated that I recognized the right of Mr. Elmore to occupy the bench of the eighth district court. I have never written a letter to Governor Warmoth or to any one else containing any such statement. On the contrary, I said to Governor Warmoth and others that I contemplated tendering my resignation. I wrote a letter to that effect, but I afterward reconsidered my determination, and did not send it. My intention to resign implied that I claimed to be judge.

I stated to Judge Elmore, in the presence of one of the editors of the Times, that I

still believed myself to be the judge of the eighth district court, but that I would not seize the office by violence; that I would give him due notice of any action I might propose to take.

I regret exceedingly the position I have felt myself bound to assume, but I have done what I believed to be my duty. I hold a public office under the constitution and laws of the State. I am required by article 122 of the constitution to remain in the discharge of my functions until my successor is inducted into office. No man can be legally inducted into office until it has been legally ascertained that he has been elected. In contemplation of law I believe Mr. Elmore has not been elected, and the commission held by him is as absolutely void as if it had been issued to a female, to a minor, or by an ex-governor. Were I to consent to his taking the office, I would be giving countenance to a palpable violation of the constitution and laws of the State.

A person who seizes a judicial office by violence, and who holds no other commission than one which imports absolute nullity upon its face, when considered in connection with the laws of the State, and those public acts of which courts take judicial cognizance, does not hold office under color of title, and is not a *de-facto* officer. I believe that every judgment rendered and order made by the learned gentleman who assumes to preside in the eighth district court is null and void. I believe that the courts will so decide when the issue is made and presented.

Very respectfully,

HENRY C. DIBBLE.

The supreme court did not recognize Mr. Elmore. At one time he refused to execute a decree rendered by them, and he was attached for contempt, Sheriff Saniruet serving the process, and was committed to prison for ten days and fined $50.

SUPREME COURT.

This tribunal was in session yesterday morning. Present—Chief Justice Ludeling and Justices Taliaferro, Howell, and Kennard.

The rule for contempt taken by Simeon Belden, attorney-general, on the information of George E. Bovee, secretary of state, against Judge W. A. Elmore and E. T. Manning, clerk of the eighth district court, was decided by imposing a fine of $50 on Judge W. A. Elmore, and committing him for ten days in the parish prison, and Mr. Manning $50 fine and five days in the parish prison.

In the matter of the mandamus case of George E. Bovee vs. the judge and clerk of the eighth district court, and wherein the writ was made absolute, a copy of the decree of the supreme court in said case was yesterday served upon E. T. Manning, clerk of the eighth district court, ordering and commanding him to issue the necessary papers, ordering the civil sheriff of this parish to put the relator, Bovee, in quiet and undisturbed possession of the office of secretary of state.

The clerk issued the papers in obedience to the said order of the supreme court.

In the afternoon Judge Elmore was released from prison, having been pardoned by Governor Warmoth.

Elmore obtained an injunction against Judge Dibble. The following is an account of the hearing of the rule from the New Orleans Republican:

EIGHTH DISTRICT COURT.

The eighth district-court room was guarded yesterday morning by a posse of deputy sheriffs, as it has been for several days, and their heretofore placid existence suffered a sudden and rather startling ripple by the entrance into the court-room, at 10.45 a. m., of Judge Dibble, whose appearance was the signal for very quick movements on the part of the sheriffs, two of whom took up their positions at either entrance to the bench, prepared to heroically defend the portals of that spot.

Contrary to expectation, Judge Dibble very quietly took a seat outside in the court-room.

It now transpired that Judge Dibble had put in an appearance for the trial of an injunction suit of William A. Elmore *vs.* H. C. Dibble, for the possession of the office of judge of this court, fixed for hearing. The petition of Judge Elmore in the case has already been published.

The answer of Judge Dibble is as follows:

1. That in order that his right may be protected in the premises, and in order that he may not render himself liable to be defeated in his rights by a plea of estoppel or

judicial admission, respondent respectfully insists that the honorable judge before whom these proceedings are held is not judge *de jure* of the fifth district court aforesaid; respondent further insists, in consonance with the theory of his defense and with a view to the protection of his rights, that inasmuch as he, respondent, is *de jure* and *de facto* judge of this court, that no other district judge can legally or constitutionally preside in this court until this respondent has recused himself, and has requested such other district judge to preside in his place and stead. But now this respondent, without waiving his own right to resume this discharge of his functions only for the purpose of defending this action to be tried, admits that the honorable judge before whom these proceedings are had is *de facto* judge of the said fifth district court, by reason of the abandonment of the office by his predecessor, and respondent now formally waives the right which he claims to designate the judge who shall act in this case, and in consonance with the theory of his defense, declares himself secure herein.

Further, respondent states that he was never legally divested of his right to exercise the duties of his office of judge of the eighth district court, and that said Elmore never was legally commissioned; is therefore occupying such office without authority of law; and therefore respondent denies that in contemplation of law plaintiff has been commissioned judge of this court. Respondent especially denies that plaintiff has ever been inducted into the office of judge of this court, or has ever held said office by color of title or any legal authority.

Respondent shows that on the — day of November, 1872, the said plaintiff, aided and assisted by an armed mob, seized forcible possession of this court, excluded this respondent therefrom by violence, and has held the office by force and violence from that time to this, all of which will be fully and conclusively shown.

Defendant then assuming the position of plaintiff in reconvention, avers that he is *de jure* and *de facto* judge of the eighth district court; that he has the right to exercise said office without molestation until a successor shall have been elected and legally commissioned in conformity to official promulgation.

He avers that there has been no canvass of votes cast at the late election, and no promulgation of the election of his successor; that, notwithstanding this, the said W. A. Elmore is interfering with plaintiff and prevents him exercising the duties of said office, and for this plaintiff has suffered damages in the sum of $1,000; that he does not admit that an injunction suit as such can be maintained for the possession of a public office; wherefore, without being committed to the legal propriety of these proceedings, plaintiff, in reconvention, shows that it is necessary that a writ of injunction issue to restrain defendant from interfering with petitioner in the discharge of his judicial functions.

The petition closes with a prayer that W. A. Elmore be restrained from exercising any of the duties of the office of judge of the eighth district court, from interfering with the petitioner in his right to exercise the same; and, furthermore, that he be condemned to pay to plaintiff in reconvention the sum of $1 000.

Judge F. N. Cullom occupied the bench for the trial of this case.

Mr. John Ray, who appeared for respondent, after reading the petition and answer, requested of the court that it order the issuance of the rule *nisi* prayed for in the answer in reconvention.

To this Judge Cullom replied that he desired to hear arguments. Thereupon, Judge Cooley, Mr. Ray, and Judge Dibble argued the case at some length, at the conclusion of which the court announced that the matter would be taken under advisement.

December 11, the legislature passed an act abolishing the eighth district court and creating the superior district court for New Orleans. The incumbent of the new court has held all acts of Elmore *coram non judice*.

EXHIBIT F.

PROCEEDINGS IN THE UNITED STATES COURTS.

Circuit court of the United States.

NEW ORLEANS, *November* 26, 1872.

WM. PITT KELLOGG *vs.* H. C. WARMOTH ET ALS. } No. —. In equity.

ARGUMENT OF T. J. SEMMES, ESQ.

May it please your honor, I cannot help feeling gratified at the course which your honor, with that sagacity and intelligence with which justice is administered in this court, adopted in taking the view that the rule for contempt should await the argument upon the merits of this cause; because your honor, as a very well educated lawyer, foresaw that, under the established rules of chancery practice, even if the parties had been guilty of the alleged contempt, if the order should be revoked which had been granted on the hearing, the contempt would necessarily fall with the revocation of that order; as it is well known in chancery that the dismissal of the bill revokes the rule for contempt. This was decided by the Supreme Court of the United States itself in the great case of the Wheeling bridge. There an injunction had been granted, directing that the parties engaged in the construction of the Wheeling bridge should cease to go on with it. Nevertheless, during the adjournment of the court, they persisted and constructed the bridge. When the court met, an act of Congress in the meanwhile having been passed which legalized the construction of the bridge, the question came up whether the court would or would not punish these parties for constructing the bridge in violation of the injunction. By a divided vote they refused to punish for contempt, upon the ground that, the act having been legalized, they had no authority to punish for the act which had been done, and which at the time that the application for punishment was made was legal. So, in the courts of New York a decree was granted enjoining a party from doing an act; he violated the injunction pending an appeal; on appeal the judgment was reversed, and the court then refused to punish for contempt after the reversal of the judgment, the legal principle being that, if at the time that the person is to be punished the order or decree of the court is revoked or the suit dismissed, the contempt, if any, ends and ceases to exist. Therefore, I say it was very proper for your honor to do as you have done—to await the argument of this case upon its merits, as to the granting or non-granting of this injunction, before you would act upon the question of contempt.

The preliminary question, may it please your honor, in regard to the jurisdiction of the circuit court of the United States over the subject-matter of this case, in so far as it is presented by the bill, requires a slight analysis of the bill itself in order to ascertain what the case is, what object is had in view by the case as presented in the bill, and what relief is sought for by it. Now, sir, what are the allegations in the bill? That ten thousand persons of color, entitled to registration under the laws of this State, were, prior to the election, refused registration, on the ground of race, color, and previous condition of servitude, and thereby, in consequence of the refusal of the right of registration, they were deprived of their votes; and that these ten thousand voters thus

refused, if they had been registered, would have voted for the complainant in this bill as candidate for governor; and the further allegation is, that the evidence of the refusal of the right to vote of these ten thousand voters thus refused registration has been preserved by virtue of the provisions of the act of Congress approved in May, 1870.

The next allegation is, that the supervisors of registration have suppressed a sufficient number of votes, which if they had not been suppressed would have been adequate to the election of Kellogg, the complainant in this bill, as candidate for governor. But, if I have read the bill right, the votes suppressed are not alleged to have been suppressed on the ground of race, color, or previous condition.

The next allegation in the bill is, that through the instrumentality of an illegal board, consisting of F. H. Hatch, Durant DuPonte, and Jack Wharton, unlawfully elected in the manner described in the bill, the governor desires to fraudulently do—what? The object of creating this fraudulent board, according to the allegations of the bill, is to do the only thing which the board of canvassing officers could do to affect the election; and that is, to exclude the votes of certain parishes, upon grounds stated in the election bill—on the ground of the voice of the said parishes not being fairly heard, on account of intimidation, or violence, or tumult. The allegation, therefore, is not that this fraudulent board is going to exclude the votes on account of race, color, or previous condition, because such allegation could not be made; it would be utterly impossible. When the commissioners are called on for the purpose of examining the question whether, on the ground of fraud, intimidation, or violence, a certain poll should be excluded, necessarily the whole poll is excluded, white and black, and the allegation could not be made, and has not been made, that the object of the governor was to exclude votes which had been deposited, on account of race, color, or previous condition. What remedy does the bill ask? It asks that your honor shall interpose in this conflict between these two boards, each claiming to be the legitimate returning-officers, and, by way of injunction, to determine which is the legal board, and to arrest the action of the one, and compel the governor, who is charged under the law with the possession of the votes, to open and submit them to the investigation of the other. You are, then, called upon, by an injunction in chancery, to determine who are and who are not the legally constituted officers of the State, charged with this duty. And you are called on to do that in conjunction with and as part of—what? Not in a case where you are called on to decree ultimate and final relief, but in a bill, only a bill, to perpetuate testimony—a bill based exclusively upon the ground that Mr. Kellogg, by the state of things existing, is already defeated, and that, under the act of Congress of 1870, being defeated, he proposes to contest the election of Mr. McEnery; and before he can bring this suit as a defeated candidate and assert his rights, you are asked to interpose as a court of chancery, by way of a bill to perpetuate testimony, and arrest the counting of these votes by the governor and his board, upon the allegation, unsupported by any proof whatsoever, except the allegation of the complainant in the bill, that if you do not interpose, the governor and all his colleagues will be guilty of the high crime and misdemeanor of altering, defacing, and suppressing these returns which have been thus made. That is the case. When I have stated the case to an educated mind in the legal profession, (and I have stated a case which concedes that the act of Congress of 1870 is constitutional, which question I leave to my colleagues to discuss,) I have stated a case not embraced within the provisions of the act: a case not within the power of a court of chancery.

if it be within the provisions of the act; a case in which Congress has nowhere delegated the authority to this court to interpose for the purpose of granting the relief prayed for in the bill.

Is it necessary, sir, for me to read the act of Congress? I suppose that almost every one, since the pendency of this important controversy, has read it. The jurisdiction of the court is avowedly based upon one section only, and that is section twenty-three:

That whenever any person shall be defeated or deprived of his election to any office, except elector for President or Vice-President, or Delegate in Congress, or member of the State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office and the emoluments thereof shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office; and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote, to citizens who so offer to vote, on account of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof, so far as to determine the rights of the parties to such office by reason of the denial of the right, guaranteed by the fifteenth article of amendment to the Constitution of the United States and secured by this act.

Your honor will therefore observe that it is a special jurisdiction conferred upon this court, and it is unnecessary for me to refer to authorities to establish the proposition that the jurisdiction of the courts of the United States is limited by acts of Congress, and that, although the courts, under the constitutional amendment, may be enabled to exercise a more enlarged jurisdiction than that actually conferred by the acts of Congress, yet the arm of the courts is paralyzed until the jurisdiction which, under the Constitution, Congress can confer is actually conferred by a specific enactment upon the courts. Therefore, in all questions before the circuit court of the United States, we call upon the parties who invoke the interposition of those courts to produce an act of Congress under which those courts can exercise the constitutional functions which they propose to exercise or which the parties invoke. Now, what is the jurisdiction conferred? The jurisdiction is conferred upon the court to give relief—to whom? To a person who, being a candidate for office, is defeated or deprived of that office in consequence of the denial of the right to vote secured by the fifteenth amendment to the Constitution of the United States, to wit, the right to vote to persons being of a certain race, color, or previous condition of servitude. And the act goes on to declare that such person may bring his suit when it shall appear that the sole question touching the title to such office arises out of the denial of this constitutional right.

Therefore, sir, I say that no case, either in law or in chancery, can be instituted in this court for the purpose of obtaining possession of a State office, except upon the sole ground that the right to the office has been defeated by the denial to citizens of the right to vote on account of race, color, or previous condition of servitude; that if there be other causes; if there be frauds practiced upon black and white; if there be votes excluded for any other cause than the cause assigned by the constitutional amendment, the court has no jurisdiction to inquire into the subject; and, therefore, the only part of this bill which the court of chancery can entertain—supposing it to be a bill which a court of chancery can entertain at all—is that part of the bill where it is alleged that citizens have been excluded from voting or registration on account of race, color, or previous condition of servitude; and if that be all, and this be a bill to perpetuate testimony, upon their own statement the bill

is unnecessary; and why? Because they say—and they have brought the evidence before your honor—that the evidence has been preserved under the act of Congress, and they have got the evidence in their possession and we have it not. What do they want a bill of discovery for, when they come in here and tell us "we are defeated by the rejection of ten thousand votes, and we have the evidence in our possession?" And yet you are to enjoin the governor of this State and the legitimate board from counting votes—not rejected votes, because they could not be counted; not votes the evidence of which has been annexed to these returns and to be submitted to this fraudulent board; no, but votes the evidence of which, if they be legal votes, they have already in their possession, and now bring into this court, where you are asked to interpose to perpetuate testimony. They say there are votes suppressed. And grant that the allegation be made that they are suppressed on account of race, color, or previous condition of servitude, then they are suppressed; then they do not appear upon the returns; then they have not been counted; then they could not be counted; then the returns do not show these suppressed votes; then, what do you come here to discover?

You allege a fraud, not only against the supervisors of registration, (and these are the only people who are charged as combining with the governor to accomplish the stupendous frauds stated in this bill,) but you charge a suppression of votes, which could not be accomplished except through the connivance of the commissioners of election, not appointed by the governor, and against whom no charge has been made. You say they have suppressed votes, for they could not be suppressed in any other way. They have not counted the votes; they could not be counted in any other way but by a refusal to count them by the commissioners of election. You have alleged a fraud in which four parties must participate, the supervisor of registration as well as the three commissioners of election, without charging fraud against the commissioners of election, and you say they have accomplished the suppression of votes, which are, therefore, not stated in the returns now on file in the governor's office. And yet you say that this court has jurisdiction by way of a bill, for the purpose of perpetuating that which the governor could not by any possibility have in his possession. Then you say that these returns are to be manipulated, are to be altered, are to be mangled: this could not be on account of race, color, or previous condition. Who is to do this? You say the governor and his fraudulent board, and you want testimony to perpetuate the returns as they are. Look at the law, and your honor will perceive that it is utterly impossible that this fraud should be perpetuated as alleged, and in the mode alleged, without going through the courts of all the districts of this State and destroying there the records of those courts. Section 29 of the election law of 1870 says:

That in any parish, precinct, ward, city, or town, in which, during the time of registration or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, at any place within said parish, or at or near any poll or voting-place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election—

And here there is no fraud charged against these commissioners—

—if such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences occur on the day of election, or of the supervisor of registration, or any assistant supervisor of registration of the parish, if they occur during the time of registration, or revision of registration—

Your honor will observe that the commissioners of election perform this duty on the day of election, and the supervisor of registration upon the day or at the time of registration—

—to make in duplicate, and under oath, a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, in preventing a fair, free, peaceable, and full registration, or election, and of the number of qualified electors deterred by such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish: When such statement is made by a commissioner of election, or assistant supervisor of registration, he shall forward both copies to the supervisor of registration immediately on the close of the election. The supervisor of registration shall forward one copy of all such statements, whether made by himself, or by a commissioner of election, or by an assistant supervisor of registration, to the governor, and shall deposit one copy with the clerk of a district court of the parish.

So, sir, we are, of course, to presume that if all these statements have been made, which, under the fifty-third section of the bill, must be statements of that sort to give this returning board jurisdiction to act at all; and if Governor Warmoth should determine to destroy all of these statements, still certified duplicates are filed with the clerks of all the district courts of the State, and therefore there is no necessity to perpetuate that testimony. What is there, then, to be perpetuated? Is it the list of voters, or the count, whether fraudulent or otherwise, which has been made by the commissioners of election? The law provides for triplicates of those—one to be sent to the governor by a special messenger, one to be sent by mail, and the third to be preserved by the commissioners of election. Therefore, there is running through the whole system a preservation of duplicates and records of all these statements, and of all of the counts, and of all of the returns; and it would be a futile act on the part of the governor, with a view to defeat a particular candidate for the office of governor, to resort to the crime—the high crime—with which he is charged, of the intention to manipulate these returns; and, in addition to that, to destroy and suppress them. And, sir, when you come to consider in this connection that this charge is made by a candidate for the office of governor, and not by a candidate for any other office in the State; when in this connection and in connection with that office you come to consider the constitutional provision as to who shall be the ultimate returning-board to determine the election of governor and lieutenant-governor, you will find that this party, before he could institute this suit, as he professes or says he intends to do, has a remedy beyond Governor Warmoth; has a remedy beyond this returning-board; he must show that their action would be final and conclusive. Their action, so far as he is concerned, so far as the office of governor and lieutenant-governor is concerned, is in no manner obligatory upon the two houses of the general assembly when they assemble, in pursuance of the constitution, to count the votes and decide who is governor and who is not.

Article forty-eight of the constitution is as follows:

The supreme executive power of the State shall be vested in the chief magistrate, who shall be styled the governor of the State of Louisiana. He shall hold his office during the term of four years, and, together with the lieutenant-governor, chosen for the same term, be elected as follows: The qualified electors for representatives shall vote for governor and lieutenant-governor at the time and place of voting for representatives. The returns of every election shall be sealed up and transmitted by the proper returning officer to the secretary of state, who shall deliver them to the speaker of the house of representatives on the second day of the session of the general assembly then to be holden. The members of the general assembly shall meet in the house of representatives to examine and count the votes. The person having the greatest number of votes for governor shall be declared duly elected; but in case of a tie vote between

two or more candidates, one of them shall immediately be chosen governor by joint vote of the members of the general assembly. The person having the greatest number of votes polled for lieutenant-governor shall be lieutenant-governor; but in case of a tie vote between two or more candidates, one of them shall be immediately chosen lieutenant-governor by joint vote of the members of the general assembly.

Do you tell me that if this returning-board, by any fraud on their part, should declare Kellogg elected or McEnery elected, both houses of the general assembly, when they meet, would not have a right, as the constitutional board authorized to declare who is elected governor and who is not elected governor, to inquire into these alleged frauds, send for duplicates of these suppressed or destroyed returns filed with the clerk of the courts throughout the State, and adjudicate on this question of elected *vel non?* I want to know, if they undertook to do so, what tribunal in this land could revise their action? I admit, that if they excluded a man's vote on account of race, color, or previous condition, this court, conceding this act of Congress to be constitutional, would have jurisdiction. But what court could revise the action of the general assembly if the election is declared upon other principles, disconnected with the constitutional amendments? Here are votes alleged to be fraudulent. Here are these returns brought up which are said to have been manipulated. The general assembly is the court of last resort. This constitutional court, the general assembly of the State, determines all these questions, and there is no appeal from its decision, except that conferred by the act of Congress, conceding it to be constitutional, where the right to vote has been denied on account of race, color, or previous condition of servitude. Here this party brings his suit, admitting or alleging in this bill that he is defeated; and, of course, he alleges that he is defeated at the time he brings his bill, otherwise he would have no right to file his bill. Then he is defeated by the state of things which he wishes to preserve in *statu quo;* he is defeated by the state of things in the governor's office.

Take things as they exist, take the official returns, aside from all fraud alleged in regard to matters pertaining to the returns before they reached the governor's office. The bill proceeds upon the theory that the complainant is defeated upon these returns, therefore the destruction of these returns would not hurt him. He is now and then and there defeated. He proceeds upon the theory that he intended to bring an action as a defeated candidate; and that, as I understand the bill, the defeat was the result of the ten thousand rejected votes, and the result of the suppression of the numberless votes which he does not undertake to define, and which he alleges have been suppressed by the commissioners of election. He not only does not undertake to define these votes, but he does not undertake to state in which parish they were suppressed. According to his allegations, in all the parishes of the State there was not to be found an honest commissioner of election or an honest supervisor of registration; but that all of them were in combination with Governor Warmoth, this Mephistophiles, who had diffused his poison throughout the whole official mind charged with the supervision of this election, and who so contaminated the soul of everybody who had charge of the ballot-boxes, that they violated all oaths and suppressed votes at every poll, the number not given; but the allegation is made that the number thus suppressed would be sufficient to change the result. Here, then, as I said, is a defeated candidate instituting this suit, being already defeated by the returns in the office of the governor, and whose defeat is based upon suppressed votes that are not there, upon rejected votes of which he has the evidence in his posses-

sion. And this is styled a bill in chancery to perpetuate testimony; and this is filed to preserve evidence in the possession of the governor, of which there are duplicates made under the laws of the State and recorded as required by law; for they have made no affidavit here that these commissioners did not comply with the law and record those copies. Now, then, the fraud charged in the bill in regard to the returns in the office of the governor is a charge that Governor Warmoth desires to exclude votes, and it is based upon the fifty-fourth section of the election law, which is as follows:

* * * The governor shall at such meeting open, in the presence of the said returning-officers, the statements of the supervisors of registration, and the said returning-officers shall, from said statements, canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation, by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and offices voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected.

They have no right to declare who is duly and lawfully elected as governor; that power could not be delegated to this board under the constitution. The section goes on to say:

The returns of the elections thus made and promulgated shall be *prima facie* evidence, in all courts of justice and before all civil officers, until set aside, after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected who are required by law to be commissioned.

This law says that the governor shall issue commissions to all such persons thus declared elected, evidently contemplating that this returning-board should only declare the election of those officers who are required to be commissioned by the governor, and all officers of the State are required to be commissioned by the governor, except the governor himself, who has no commission from any source. This commission is a public declaration of the members of the legislature in general assembly convened, announcing the result of the vote. Section 55 reads:

That in such canvass and compilation the returning-officers shall observe the following order: They shall compile, first, the statements from all polls or voting-places at which there shall be a fair, free, and peaceable registration and election. Whenever from any poll or voting-place there shall be received the statement of any supervisor of registration, assistant supervisor of registration, or commissioner of election, in form as required by section twenty-nine of this act, on affidavit of three or more citizens—

So your honor will perceive that it is only upon the reception by this board of the report required to be made by a commissioner of election, or a supervisor or assistant supervisor of registration, under section twenty-nine, on the affidavit of three citizens, that this board of returning-officers, of which the governor is the head, is authorized to take any action—

—of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable and full vote of all qualified electors entitled to vote at such poll and voting-place, such returning-officers shall not canvass, count, or compile the statement of votes from such pole or voti g-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning-officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, at any such poll or voting-place; and if, from the evidence of such statements, they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning-officers shall canvass and compile the vote of such poll or voting-place with those pre-

viously canvassed and compiled; but if said returning-officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning-officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning-officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns.

You will therefore perceive that the only power whatsoever given to this returning-board, is to go through the simple clerical labor of adding together the returns made by the commissioners of election, duplicates of which are filed with the clerks of the courts throughout the State; and the only other jurisdiction which it has is, that when these statements are made by the supervisors of registration or the commissioners of election in regard to fraud or violence upon the affidavits of three citizens, then I say it is constituted a board to investigate and determine upon that question; and if they come to the conclusion that riot, tumult, or unfair practices prevented a fair vote at any particular poll, they do not reject any particular vote, but their jurisdiction gives them only the right to exclude the poll, and exclude all the votes, black and white. There is no discrimination in regard to color. There is no constitutional right guaranteed by the fifteenth amendment which applies exclusively to the protection of the rights, in regard to voting, of those of a certain race, condition, or color, which this board has any control over. They have no jurisdiction on that subject. It is impossible to exercise the jurisdiction conferred in a way to create a case coming under the constitution or under the enactment of Congress. Your honor will remember that this fraud is charged upon him with the view, as Kellogg asserts in his bill, that Governer Warmoth desires to exclude votes, and the implication is of necessity that Governor Warmoth will count, unless your honor interferes to prevent this enormous fraud, all the votes and exclude none of the boxes; for the charge made, though twisted and turned with that verbose phraseology which makes it difficult to extract the essence and the idea of the bill, when analyzed, and when you eviscerate the real charge, is, that all of this manipulation, suppression, and fraud, is simply with the view to exclude votes, or rather to exclude returns; and I call the special and particular attention of your honor to that clause of the bill, to show that I have interpreted it correctly. After describing the conflict between these two boards, the bill goes on to say:

* * * That your orator believes, and therefore avers the fact to be, that it is the intention and deliberate plan of the said defendants aforesaid, pretending to act as returning-board as aforesaid, to make such pretended canvass of votes as shall effect an apparent defeat of your orator, and declare the said McEnery elected as governor of said State; that to produce said result they will give effect to all such fraudulent certificates and returns as tend to produce such an effect, and tend to exclude from all consideration, count, or canvass, all votes of persons of color that have been supressed or prevented from being cast. * * *

I have read this extract to show that these returns, even if destroyed, by no means affect the votes rejected or the votes suppressed, because, of course, they are not included in the count or in the returns which are on file in the office of the governor. The bill goes on to say:

And your orator further shows that said defendant, H. C. Warmoth, claiming to be in possession of the returns of a large number of the supervisors of registration, refused to open said statements of the supervisors of registration in the presence of said returning-officers, being influenced in said refusal, as your orator believes, by the fear that said returning-board would make due and proper investigation of the truthfulness of said returns and statements. * * *

Now, the only due and proper investigation of the truthfulness of these statements would be to investigate in regard to fraud and violence in the election, because that is all the jurisdiction this board has, except the physical labor in counting the returns of the commissioners.

And that said scheme for excluding lawful ballots would be defeated; or that evidence of the frauds that had been committed, and of the fact that a large number of persons had at such election offered to vote, and had been denied the right to vote, contrary to the Constitution and the laws of Congress, would be discovered. * * *

Now, the law does not require, in regard to persons who offer to vote, the commissioners of election to take any evidence whatever; nothing of that sort is returned. As I have said, the complainant has possession of that. The frauds in regard to suppressed votes could not appear on the returns; therefore the only fraud which could by any possibility be committed, would be in determining to reject or exclude certain votes or polls on the grounds stated in sections 29 and 54 of the election act of 1870. That is the only possible jurisdiction this board has, and the only possible way by which Kellogg could be at all affected would be by this board, vested with this power to determine these questions, excluding votes not on account of race, color, or previous condition, but on the ground of violence, tumult, and unfair practices. That exclusion, I say, could not affect him, because he brings this suit upon the ground that by the returns, as they stand, he is a defeated candidate, and that he has a right to preserve them. The exclusion of some votes will not make him a worse defeated candidate than he is now. I therefore say, sir, that granting the constitutionality of the act of Congress of 1870, for the purposes of the argument; granting that we do not appreciate the changes which have taken place by virtue of the adoption of the fourteenth and fifteenth amendments to the Constitution of the United States; granting that the learned counsel who opened the case is the only one in this community who does appreciate these important changes; granting that he has the right to arrogate to himself that sort of self-complacent satisfaction manifested by the insinuation that we are the Bourbons and he the man of progress, so far as the constitutional theory is concerned—so far as the Constitution has been affected by the amendments adopted since the war: yet I can tell him that he forgets that whatever may have been the past, so far as this election is concerned, in respect to the constitutional amendments, both parties stood upon the same platform. Both parties accepted the fourteenth and fifteenth amendments, and declared that they accepted them in good faith and honor. Both parties agreed to stand by them. Both parties, one represented by Mr. Greeley, the great defender of the colored race, and the other by Grant, the representative of the constitutional amendments, agreed upon this question. Therefore it comes with bad grace from the learned counsel to say that any of us who are engaged in the attempt to maintain the purity of the ballot-box, to assert simply our local rights under a legitimate State government, are forgetting our duty to the Constitution, and will attempt to rise before this court and make an argument upon a constitutional theory, which we concede that the war, in part, has destroyed, and to which we submit, and which in other parts has been changed by the constitutional amendments referred to. He must think, indeed, that progress lies upon only one side of this case, and that we, who conceive that we are right, (although I grant him the same privilege,) are blinded by the prejudices of the past, and are not able to see the case as it is presented by the light of the nineteenth century and of the year 1872, instead of 1861.

But still, although I say that we are up to the times and recognize these constitutional changes, and perceive that there is difficulty in consequence of these changes in drawing the line of demarkation between what has been changed and what has not, because the questions are intricate, we do not concede that the constitutional government created by our ancestors, by which the States are separated from the Federal Government, and charged with the execution of certain local affairs, while the General Government is classed with our foreign and general domestic affairs—we do not recognize that all these land-marks have been destroyed and broken down by the constitutional amendments referred to, and that the State to-day, as the counsel sneeringly said, is a municipal government, which it was in the power of Congress to destroy if it pleased; when the very essence of the Government depends now, as it did when it was first formed, upon the constitutional theory that there *are* States having separate and independent powers, under a general government which under the constitutional amendments has more enlarged powers than it had before. It is true the Constitution was changed, but it was only changed to the extent of the powers conferred by that instrument and its amendments, all others being, as they were in the beginning, reserved to the States or the people thereof respectively. What really is the effort here, sir? The insinuation in regard to the constitutional power was thrown out for an object. The effort here is practically to have the United States court interpose, when the act of Congress does not give it power to do so, and declare who is or who shall be the legal board of returning-officers for this State; and the pretext is that we have corrupted all of the officers of election; that the men elected have participated in this corruption; that even a candidate whose reputation up to this time has never been assailed in any court of justice or elsewhere, Governor McEnery, has participated in these frauds, and your honor has actually enjoined him for the time being—unadvised, of course—from acting as governor of this State. And, sir, when in the face of these alleged frauds we bring in the affidavits of all who are charged with them, denying them; when there is no evidence whatsoever of such frauds except the allegation made by the complainant in his bill; when we go a step farther and say, "Now you have charged us with fraud, we believe that you desire to get possession of these returns for a fraudulent purpose on your part. You have restrained us from counting these votes in the Federal court; we have restrained you from counting the votes in the State court: thus locking up all the administrative powers of the State government, by which alone it is enabled to perpetuate its existence;" when the governor of this State, in that condition of things, signs a bill by which the authority of these two contending boards is repealed, he is charged with what? With a *coup d'état*, to defeat the operation of your honor's injunction; and the learned counsel has the hardihood to insinuate that the approval of that bill by the governor, in the exercise of his constitutional functions as the chief executive of this State, was a violation of your honor's injunction.

What new theory of *coups d'état* is this? A *coup d'état* I understand to be an unconstitutional assumption of authority, by which the established government is overthrown, either in whole or in part; and yet this constitutional lawyer, who is up to the progress of the times, calls a constitutional function, performed by the chief executive, over which nobody has any control, a *coup d'état;* as if the governor of this State, or of any other State in the Union, could ever be guilty of a *coup d'état* in the exercise of his constitutional functions. They say that this *coup*

d'etat is to be carried out by a fraud. What fraud, sir, can we commit? They say that we desire, through the instrumentality of Hatch, DuPonte, the governor, and Wharton, to perpetrate these enormous frauds on the State. What do we do? We come in now and lay down our power; we abandon the position where we are enabled to commit this fraud; we surrender the authority to act as returning-officers of this board, because the repealing act repeals that authority; and, in order to put our act beyond all question, we convoke the newly elected legislature to nominate and appoint officers who shall count these returns and give everybody a fair show. Does that show fraud? The man who occupies the vantage ground, the man who is in possession, the man who is enabled by the physical power of the State, as the executive, to carry out, so far as the State courts are concerned, his objects of fraud, if he desired to do so—that man, when charged with fraud in this court, comes in and says: "To show that these allegations are false, to show that they are perfectly baseless, to show that these men themselves have entered into a scheme to get possession of these votes, in order to defraud the people of this State, I come forward now; I sign this bill; I give up my power; I surrender the means of perpetrating the fraud, as you allege; and call in an umpire, a third party, the legitimate tribunal of the State, to select those into whose hands I will confide these returns, and who, openly and before the public, will engage in their canvass and count these returns."

And this is a *coup d'état*. Why, sir, there is nothing on earth that Governor Warmoth could do, for the purpose of protecting the purity of the ballot-box and of these returns, which would satisfy these people, except to surrender them into the hands of—whom? Into the hands of a board, depending for its existence upon a removed secretary of state, or alleged secretary of state, who is a defaulter; depending for its existence upon a man who, contemplating that his machinations with Lynch would be discovered, apprehended that he would be removed; because on the 8th, a week before he was removed, he goes to Douglass, and employs him to make him a seal of State, to enable him to say that he had the seal of State; imagining that the notion which prevailed in old English times, that the party who had the seal of the State had the office, was still in vogue—he goes, I say, on the 8th, in anticipation of the very fact which occurred, in order to defeat the legitimate action of the executive in removing him, and prepares this seal, and then, when the question arises, he goes into court, and swears that he has the seal.

We proved that he had it not; and we proved that the only seal was then in the office of the secretary of state, and his own employé had refused to deliver the one ordered by him, because he considered it criminal to deliver it to a person who did not occupy the position of secretary of state. Because we will not surrender these returns to the board created by this man, and have them counted by him and another man named Lynch, who swears that at the meeting of the board, when the vote was put in regard to Hatch and DuPonte, the governor being present, Wharton being present, Herron being present, and Lynch being present, he voted "No;" when all the other witnesses, interested and disinterested, swear that he did no such thing; that the vote was put; that Hatch and DuPonte were declared elected; that they were sworn in; that Lynch voted neither nay nor yea; that he acquiesced in their being sworn in; that he did not say a word until appealed to by Herron to leave, and it was only after repeated importunities on the part of Herron that he snatched up the minutes and left the room. This man,

who comes here before this court and goes before the eighth district court and swears that he voted nay, (just about as true as the allegations contained in this most admirable bill,) because the governor will not surrender the votes of the people of this State to a board created by these two persons who, after all that occurred in the governor's office, retreated, go before the chief justice and are sworn in, representing themselves as constituting the board; because the governor will not submit the votes of the people of this State to the scrutiny of such a board, he is charged with fraud, and that, too, by whom? This very secretary of state himself, who was put into the position he occupied by Governor Warmoth in 1871, on the removal of George E. Bovee, and now, after he holds the office by virtue of this removal, after he has enjoyed it by virtue of this removal, after he has pleaded in the very suit the record of which has been brought before you the legality of this removal, and claimed the possession of the office by virtue of this removal, he turns round and says, when he is removed, that it is a very different thing; that the governor has no power to remove him, although he had the power to supersede George E. Bovee, who was elected secretary of state in 1868.

Now, sir, what has the supreme court of this State said upon the legal status of Mr. Herron? The record which I referred to before is the one where the lower court adjudicated that the governor had the right to suspend, and an appeal being taken was dismissed, and the supreme court never expressed any opinion upon it; but in the case of Wittgenstein against Fairfax and Herron they did express an opinion. Wittgenstein had been appointed assistant secretary of state by Bovee, who had been elected secretary of state. After the election of Bovee, and Herron taking possession of the office, the latter undertook to appoint an assistant secretary of state, an office created by the laws of Louisiana.

That assistant secretary of state thus appointed was named Fairfax, and he took the place of Wittgenstein, who was then in the office. Thereupon Mr. Wittgenstein sued Mr. Fairfax, claiming to be the legal assistant secretary of state. What does the supreme court say upon the subject? The case is number 3905, and the opinion was delivered by Justice Taliaferro on May 23, 1872:

> The governor is without power to appoint a secretary of state, unless a vacancy occur in the office, and then only *ad interim*, as provided by the constitution. Conceding that, in the case of the suspension of the secretary of state from the performance of the duties of the office, the governor would have, on general principles, the right to appoint a person to discharge the duties of secretary of state, upon which we express no opinion, the person so appointed would be clothed only with ministerial duties, such as arise in the usual routine of office business. The secretary of state is vested by law with the power to appoint an assistant secretary of state. This is not a mere ministerial duty. The person charged with the performance of the ministerial duties of the secretary of state, during his suspension from office, is without power to remove from office, and much less without the power to appoint to office, an assistant secretary, for the reason that he himself is not secretary of state. The appointment of Fairfax to the office of assistant secretary of state by Herron is therefore nugatory and without effect. Wittgenstein's right to that office was in no manner impaired by the action taken in the matter by Herron. The suspension of Bovee from office by the governor did not affect the right of Wittgenstein to discharge the duties of the office of assistant secretary of state, and the ejection of the latter from office was without warrant or authority of law. We think the judgment of the court *a quo* erroneous.

Now, sir, in a matter of this sort, it is not necessary for me to cite authorities to show that the courts of the United States will always follow in regard to the construction of State constitutions and State laws in reference to the officers of the State, the decision of the highest tribunal of the State. Here, then, is a decision of the supreme court of the State of Louisiana, to the effect that all that was effected by the

governor was the suspension of Bovee from the discharge of the duties of the office of secretary of state; that, notwithstanding his suspension, he remained and was and is secretary of state; that the appointment of assistant secretary of state belongs to the secretary of state; that, therefore, Herron, being appointed by Governor Warmoth during the suspension, was only authorized to discharge the ordinary routine duties of the office. The appointment of the assistant secretary not being a mere ministerial duty, and Herron not being secretary of state, but Bovee, Herron had no right to remove Wittgenstein and appoint Fairfax. There was no vacancy in the office of secretary of state, Bovee still filling it, notwithstanding he was paralyzed by the suspension by the governor in executing physically its duties. What is the result? That this man, who claims to be secretary of state, notwithstanding he got possession by the removal of his predecessor and his own appointment by the governor, was nothing more nor less, there being no provision of the constitution of the State regulating the power of suspension, than a mere clerk, selected by the executive, from the necessities of the case, to discharge the routine duties of the office of the secretary of state, which never was made vacant by the suspension, and which Bovee filled then, and fills now, only his power is paralyzed by the suspension. If this be the proper view taken of this fact, what right has Herron, being a mere clerk, to question the power of his master to discharge him? I repeat the word, *master*. He holds no office; the secretary of stateship is an office. Bovee holds it in a constitutional view, but he is not discharging the functions of it. Herron discharged them for a time; he did it as the clerk of the governor. His master put him there, his master removed him; he holds no office; he has no tenure; it is undefined by law; it has no term; it has no legal existence, so far as the statutes of the State are concerned; and, therefore, it is a temporary employment of a clerk to perform temporary duties. He is in the position of a clerk in a store, whom his employer can at any time discharge; and yet he goes off and has a seal made, as if he was invested by the people of this State or by the laws of this State with the office, which he had a right to hold in spite of the removing power of the governor. Therefore, away with this man Herron, either as to fact or as to legal power.

But, sir, what are the facts that occurred when this board assembled? They talk about schemes of fraud on our part. What did they do? On the 12th of November they convoked this board, and immediately Mr. Lynch and Mr. Herron, in pursuance of the scheme they had evidently been concocting, (for I speak by the minutes,) moved that the vacancies in the places of Anderson and the lieutenant-governor, who were incompetent to serve in consequence of being candidates at the election, should be filled. The governor, taken by surprise, seeing the scheme which these parties had in view, fought for a postponement, and after some debate it was postponed to the 13th. The governor, on the 13th, paralyzes this man Herron by removal. They meet at the board; he calls in Jack Wharton, whom he had appointed secretary of state, and who shows his commission. Herron, notwithstanding his removal, with the impudence of a man who will engage in anything for reward, made an effort to put the proposition that Longstreet and Hawkins should be selected. The governor thereupon stopped him, and said, "You have nothing to do here. I propose Hatch and DuPonte." The vote is taken. Herron voted no—so he says; the governor voted yes; Lynch said nothing. Hatch and DuPonte were immediately called in; they were sworn in, Lynch saying nothing, still

seated at the table. Herron, seeing they were sworn in and that he no longer could be of any use in carrying out the scheme which they had in view, calls Lynch away, who takes off the minutes with him, thinking that the minutes, like the seal, constituted the board, and proceeded to the office of the chief justice to be sworn in as a board, without having convoked the board, without having asked the governor to assemble to constitute the board; and they set themselves up as being the legal board. Now, if there is any principle of law that is well settled, it is the principle which governs this point. I am arguing upon the supposition that Mr. Lynch did not vote, but that the governor did; admitting that Mr. Jack Wharton did not vote, or was not authorized to vote, though he did. The minutes are that Mr. Jack Wharton voted also; but throw Jack Wharton out and throw Herron out, then the only two remaining officers were the governor and Mr. Lynch, two legally constituted officers. The one puts a vote, and votes for certain individuals; the other sits silent and says nothing. They are sworn in, and he says nothing. I say, sir, that that is an election. In 2 Burrows, page 1018, is laid down the following:

> At this meeting the mayor nominated Mr. Seagrave, which none then opposed. The vote was taken, and nine voted for Mr. Seagrave, after which ten or (as it is said) eleven protested against any election at all at that time. But mere silence is not a negative, either express or implied, and as no other person was proposed, and nine voted for him and none against him, he was well elected.

That was the argument of the counsel:

> Lord Mansfield saw no doubt in this case. Here was an assembly duly summoned; one candidate was named—

The only names mentioned in this case were those of Hatch and Du Ponte. Governor Warmoth prevented any other from being named—

> —they had no right to stop in the middle of the election. The mayor did not put any question for adjournment, nor was there any. * * *
>
> Lord Mansfield confirmed his former opinion. He said the protesting electors had no way to stop the election when once entered upon, but by voting for some other person than Seagrave, or at least against him; whereas here they had only protested against any election at that time.
>
> Mr. Justice Wilmot: There was a case of Rex *vs.* Withers, (Pasch., 8 G. II, B. R.,) where out of eleven voters five voted and six refused, and the court there held that the six virtually consented.
>
> In the case of Regina *vs.* Boscawen, (P. 13, Anne R. R.,) *(in Truro,)* where ten voted for Roberts and ten for Boscawen, a non-inhabitant; the votes given for the non-inhabitant, where inhabitancy was necessary, were holden to be throwa away. So in the case of Taylor *vs.* Mayor of Bath, (Temp. Ld. Ch. J. Lee, B. R.)
>
> Lord Mansfield: Whenever electors are present and don't vote at all, as they have done here, they virtually acquiesce in the election made by those who do.

That case is again reported more fully in the 1st William Blackstone. Suppose an election should be proclaimed in New Orleans for mayor to-morrow, and we, believing that there is a mayor already elected, or for some other cause do not choose to go to the polls, and it turns out that we are mistaken, and that really an election should have been held to-morrow; and suppose that two men go to the polls and vote for Mr. A. B., and all the balance of the people of the city refuse to go and protest against it, those two votes would elect the mayor, notwithstanding the fact that the balance of us protested against it; for the only mode by which a man can protest against any election is to go to the polls and vote against the candidate presented. There is no such thing as protesting against an election; and the only way in which you can defeat a man is to vote against him, or to put up another candidate for whom you will vote in preference. You cannot say that you will not vote at all,

because those who do vote will decide the question. You cannot file a long protest, because protesting is not the way of defeating the candidate who is nominated: you must vote in the negative. Therefore the principle is, that if all the electors were present in an assembled body, and if only one man votes upon a proposition and the others are silent, the proposition is carried. And mark, sir, that Mr. Lynch sat still and saw these men sworn in by Judge Cooley, who testifies to the fact, without making any protest, or undertaking to make any remark upon the subject, without moving any reconsideration of the vote, which he had a right to do, I presume, under parliamentary rules. He does nothing of this kind, but simply takes possession of the minutes, after repeated importunities on the part of Herron to leave the room, and abandons the place where he should have remained to discharge his duties there by voting in the negative, moving a reconsideration, or by taking some other step which he might consider necessary to vindicate his rights as a member of that board. He does nothing of that sort, but acquiesces entirely, so far as his conduct is concerned, in what had taken place. Then these people assemble together; they go before the courts, and they swear that they are in the possession of the offices of commissioners of election—swear, sir, to a fact which is legally untrue. I say it is untrue, because they say they are in possession and claim to be what is called the *de facto* board; as if, sir, there could be a *de facto* officer under any government who is not physically in possession of the archives and papers of the office, and who is not physically discharging the duties of the office, and who, in the discharge of those duties, is not recognized by the highest power—that is, the executive of the State or of the nation, who has the Army and Navy at his back to enforce the exercise of the duties of that office. The *de facto* officer is the one recognized by the executive of the State, who enforces that recognition by physical power. That is the *de facto* officer; that is the one who is in possession. In this particular case this argument applies with extreme force, because the very law creating this board declares that the returns of the election shall be transmitted—to whom? To the board? No. One copy to be sent by a special messenger to the governor; the other to be transmitted by mail to the governor. What is the governor to do? The governor, then, in possession of these returns by law as the chief executive of the State, is called on, and he only, to open those returns in the presence of this board, and submit them to their scrutiny.

The governor is thus vested with the power of recognition, for the board that he opens the votes before is the board recognized by him. The governor, then, is not only vested with the power of recognition, but also with the physical power of carrying out his recognition; and if the board recognized by him, if the board having the physical power to carry out its orders and decrees, is not the board *de facto*, I know not, sir, what a *de facto* officer is. Therefore, so far as that question is concerned, I hold that the courts of the United States have no right to decide who is or who is not a State officer, and certainly they have no right to do it in a collateral way. Here, in the course of this investigation, it may become necessary, in another view of the case, to determine which is or which is not the legal board of returning-officers. They have no right to have that question determined collaterally, either in the State courts or in the Federal courts. The only way in which the right to office can be tried is by the writ of *quo warranto* in the Federal courts, or by a petition, filed by the attorney-general, in the State courts. All courts are bound to recognize the officer in the actual exercise

of his office, and cannot allow the question of who is or who is not the legitimate officer to be discussed or entered into in any suit wherein the question may come collaterally before them. Is it necessary for me to refer to decisions to establish that proposition? Is it not a conceded proposition that the right to hold office cannot be tried collaterally, but that it must be by a direct action and by writ of *quo warranto?* I will refer to some authorities: 42 Alabama, 491; 25 Arkansas, 336; and in this State the supreme court decided (in 21 Annual, p. 655) that the right to office can only be contested by a writ or suit brought by the attorney-general; and in Michigan it was held that a writ of *mandamus* was not a proper proceeding to contest the right to office; and the Supreme Court of the United States (in 3 Wallace, 236) held that the writ of *quo warranto* could not issue except in the name of the sovereign. That was a case where the officer of a Territory was supposed to be in office illegitimately, and a suit in the nature of a writ of *quo warranto* was brought in the name of the Territory. The Supreme Court decided that, the Territory not being a sovereign, the suit should have been brought in the name of the United States, and reversed the judgment which had been granted in the lower court. In order that your honor may see the extent of that decision, I will read a part of it:

> The writ of quo warranto was a common-law writ. In the course of time it was superseded by the speedier remedy of an information in the same nature. It was a writ of right for the King. In the English courts an information for an offense differs from an indictment chiefly in the fact that it is presented by the law-officer of the Crown, without the intervention of a grand jury. Whether filed by the attorney-general or master of the crown office, and whether it relates to public offenses or to the class of public rights specified in the statute of 9 Anne, ch. 20, in relation to which it may be invoked as a remedy, it is brought in the name of the King, and the practice is substantially the same in all cases. Any defect in the structure of the information may be taken advantage of by demurrer. In this country the proceeding is conducted in the name of the State or of the people, according to the local form in indictments, and a departure from this form is a substantial and fatal defect. In Wallace *v.* Anderson this court said that the writ of quo warranto could not be maintained except at the instance of the Government; and as this writ was issued by a private individual, without the authority of the Government, it could not be sustained, whatever might be the right of the prosecutor or the person claiming to exercise the office in question. In the case of the Miners' Bank *v.* The United States, on the relation of grant, the information was filed in the name of the United States, in the district court of Iowa Territory. The sufficiency of the information in this respect does not appear to have been questioned. A State court cannot issue a writ of mandamus to an officer of the United States. "His conduct can only be controlled by the power that created him." The validity of a patent for land issued by the United States "is a question exclusively between the sovereignty making the grant and grantee." The judges of the supreme court of the Territory of Nebraska are appointed by the President and confirmed by the Senate of the United States. The people of the Territory have no agency in appointing, and no power to remove them. The Territorial legislature cannot prescribe conditions for the tenure or loss of the office. Such legislation on their part would be a nullity. Impeachment and conviction by them would be futile as to removal. The right of the Territory to prosecute such an information as this would carry with it the power of a motion without the consent of the Government from which the appointment was derived.

Therefore, for this court to enter into a discussion as to who is or who is not the legal returning board, and to determine it in this collateral way, is not only violating the general principle of law that no court can determine the right to office, except in a direct action, but is violating the further principle that no other than the government which created the office and appointed the officer can institute the proceedings, no matter what officer it may be. This has been decided, under the usurpation act, by the supreme court of this State, and this is the law everywhere. Indeed, until the usurpation act of 1868 was passed by the legislature of this State, there was no proceeding known to the laws of

Louisiana by which usurpation into a public office could be tried, the code of practice having confined the relief exclusively to officers of corporations. The article of the code of practice expressly defines public offices to be offices emanating from the governor by and with the advice and consent of the senate, or without it, and says that they would be provided for by special laws; but until the act of 1868 was passed there was no remedy for usurpation of a public office. There was a remedy for a man who claimed to be elected to contest the election in a particular way, and thus claim the office; but there was no remedy for a man who had been put in possession of the office and was then excluded from it by somebody else, until the usurpation act of 1868 was passed. Therefore, I say, sir, that they are asking you to issue a writ of quo warranto, by an injunction enjoining these State officers from performing these functions imposed upon them by the law; and to issue an injunction based upon the principle that these defendants are not the legitimate board, would be deciding a question over which you have no jurisdiction, and a question where, in the administration of the law, your honor is bound, like the courts of the State, to recognize the *de facto* officer until he is displaced by a legitimate judgment in a legitimate proceeding. This power of contesting an election, may it please your honor, is not a judicial power, except in so far as it may have been by express enactment submitted to the arbitration of the court by the legislative power of the government. That principle, sir, as part of the jurisprudence of Louisiana, has been settled by an adjudication of the supreme court of this State.

[The judge here left his seat for a few minutes. After he had resumed his chair, Mr. Semmes continued his argument.]

May it please your honor, I had laid down the proposition that the power of counting votes incidental to contesting an election, and consequently of bringing suits in regard to contested elections, was not in the nature of judicial power, but that by its nature it was administrative, and only became subject to the judicial authority to the extent to which it had been subjected to the scrutiny of the judiciary by a special enactment of the legislative branch of the government. I take and present this view for the purpose of making this application: That if the power be of the nature I have described, not in itself judicial, but only made so to the extent to which it has been confided to the judiciary by enactments of the legislative department of the government, even then it can only be exercised in the manner and in the mode indicated by the legislative department; and the only mode by which a scrutiny into an election, or by which the results of an election can be inquired into, under this act of Congress, is in a suit instituted by a *defeated candidate, after the result of the election is declared, to recover possession of an office, upon the ground that he was defeated by the exclusion of votes by reason of race*, color, or previous condition of servitude. And the circuit courts of the United States cannot exercise their power, either by bill in chancery or otherwise, unless the suit be for possession of the office. I hope that I make the proposition understood as clearly as I have it in my own mind. It is, to repeat, that it is not in the scope of judicial power to inquire into an election; that it is in its nature an administrative function; that suits for office, which necessarily involve an investigation into an election, did not exist anterior to laws authorizing the courts to make these investigations, and then only to the extent which the legislative department had seen fit to authorize the judiciary to act, and only in the mode in which it is authorized to make such investigations. I will read from 13th Annual (p. 90) the opinion of Judge

Spofford in the case of the State of Louisiana on the relation of O. S. Rousseau, praying for a mandamus against the judge of the second judicial district court. That was a case where, through an omission in our election law, the district courts of the State had been granted no power to entertain controversies looking to the judicial scrutiny of votes for the office of judge of the second judicial district.

Judge Spofford says:

> If the statute under which he attempts to proceed does not embrace his case, he is without a standing in court. The contesting of votes is not a judicial function, only so far as made such by special statutes. Indeed, some may have gone so far as to question whether this is not wholly a matter of administration, which cannot with propriety be referred to the judicial tribunals at all. At any rate, it is clear that such tribunals cannot usurp any greater control over this business than is specially imposed upon them by law. In the absence of a statutory authorization, they are without jurisdiction of the matter, *ratione materiæ*. The consent of parties cannot give jurisdiction, and all courts before whom such an unauthorized controversy is brought must decline, *ex officio*, to render any order which would recognize a right to sustain the case.

I have referred to this case to show that this is a special jurisdiction, the result of special enactments, and can be exercised in no mode except the mode designated in the statute, and to no extent beyond the limits therein described. To enforce that provision there is a principle of law which declares that neither the courts of the United States nor of the State will interfere to control the action of officers charged with the exercise of those public duties which are discretionary in their character. Now, this returning board, as a board, is a court. The case upon which the court is authorized to decide is made up upon affidavits, sworn to by three citizens, accompanied by the statement of the supervisor of registration; the case is submitted to the board; they then examine it, and if they think that there has been such interference with the elective franchise as to require that the matter should be really and seriously considered, they form themselves into a court; they are authorized to send for persons and papers; they make an investigation, and upon the result of that investigation they announce a judgment, and that judgment is executed by either rejecting or retaining the poll which has been questioned.

Here, then, is a case of the exercise of an important public function, an administrative function by administrative officers, in which the duties are not simply ministerial, for the board is invested with a large and most extraordinary discretion. You are not only asked to enjoin us as the legitimate board from acting at all, but you are invoked through the instrumentality of an injunction—an injunction made a part and parcel of a bill for the perpetuation of testimony, a matter unheard of in a court of chancery—to stop entirely the wheels of the State government. I say, without the fear of contradiction, that there was never before a bill to perpetuate testimony accompanied by an injunction. You are asked, sir, to prohibit us from going on and performing these great administrative public functions; and we contest your right to do so, first, upon the specific ground that you cannot investigate the right to office in this way, and then upon the general ground that a court of chancery ought not to interfere with the administrative duties of public officers in regard to elections. In 48th Illinois, page 489, this question came up. There they wanted to stop the election altogether. And what are you doing here? This restraining order is stopping the machinery of this State; this restraining order is practically arresting the State government. If the theory for which the learned counsel on the opposite side contend be sustained, that you have this

power to interfere, then there can be a declaration of the election made by nobody, one side being prohibited by the State court and the other side prohibited by the Federal court; and there is no legislative department of the government in existence to-day. The terms of the members of the legislature expired on the 4th of November, 1872, and no declaration in the mode pointed out by law, as contended for by the counsel on the other side, can be made. I allude to this, may it please your honor, for the purpose of showing you that, if this power of injunction is to be exercised, it will paralyze the State government, which was not contemplated by the act of Congress. The act of Congress contemplated that the election should be declared; that the officers should take possession; and that if a party was defeated in consequence of the exclusion of votes on account of race, color, or previous condition of servitude, he would have the right in the Federal court to contest. That does not paralyze the State machinery; that does not raze the very foundation of the Federal Government, the existence of States; that does not render the State, so far as all its organs are concerned, a perfect hermaphrodite, without a legislative department. No result of this sort would come from a proper mode of exercising jurisdiction under the constitutional amendments; but this mode proposed here seizes upon the power to determine who are the legitimate State officers; seizes upon the power to arrest all the machinery of the State government; and seizes upon the power, not necessary to the proper interpretation of the constitutional amendments and not granted by Congress, to control the officers of the State government in the discharge of their public duties. A court of chancery will not do it. I read from 48th Illinois, page 489:

> If it be meant that a court of equity can grant a temporary injunction to stay the election or prevent the officers elected from acting—

As your honor has done by your restraining order in this case in regard to McEnery—

> —until a final hearing, the grounds are not well taken. A temporary injunction is but a matter of discretion, and a court would hesitate long before granting an injunction to stop the holding an election, or to prevent an officer from entering upon the discharge of official duties, even if equity had jurisdiction, at least until after the final hearing of the case. We are aware of no well-considered case which has enjoined the holding of an election, or prevented an officer of the law from giving the required notices for or the certificate of election. To sanction the practice of granting temporary injunctions in such cases would be highly calculated to obstruct the various branches of government in the administration of public affairs. Courts of equity can have no such power, otherwise any and all elections might be prevented, and government greatly embarrassed.

This is not only good law, but good common sense. Congress gave no power to grant mandamuses or injunctions to interfere with State officers in counting the votes or giving certificates of election. Congress, sir, recognized the principle that there should be no such interference; that it was better to let the fraudulent result be announced, and let the officer go into office and discharge its duties, than to arrest the entire action of a State government, allowing the party of course his remedy, either in an action for damages by bringing a suit to recover the possession of the office and vindicate his rights, or by indicting the party for a criminal act, which could have been done. This principle, sir, is enforced by the courts of the United States—by the courts everywhere.

In Abbott's New York Reports, volume 2, new series, page 290, the court says that even in suits between parties contesting for the right to

an office it will not grant an injunction to stop an officer *de facto* from performing his functions. I will read the decision referred to:

I think there can be no doubt that in actions to oust persons exercising the duties of public offices under a claim of right, a temporary injunction restraining them from exercising the duties of the office pending the litigation will not be granted. I have looked in vain for a single case recognizing such a right. The reasons for refusing an injunction, in such cases, are clear and powerful. The exercise of the duties of offices are necessities to the public welfare. Unless the officer *de facto* is permitted to discharge the duties, they cannot be discharged until the end of the litigation and the legal title is determined.

If you have the right to grant this injunction, and the State court has the right to grant the other injunction, what is the result? The things remain *in statu quo* until the ultimate decision of this case, which may be some three years after it has reached the Supreme Court of the United States. It will be decided, perhaps, after Mr. McEnery, the legitimate claimant of the office, may be in his grave, or three-fourths of his term expired. The result will be that state of things which these men proclaim would be the greatest evil that the world ever saw. The result would be that which the learned counsel says has produced a condition of things in this State which is perfectly intolerable. The result would be that which he says all good men abhor. The result would be that this "fraudulent executive," with his *coups d'état*, would remain in possession of the governor's office pending this long litigation.

I will read further from the authority I have just quoted:

Unless the officer *de facto* is permitted to discharge the duties, they cannot be discharged until the end of the litigation and the legal title is determined. This, in many instances, might involve a long time, and the public might suffer serious injury, loss, and inconvenience.

As they undoubtedly would in this case, in the estimation of the learned counsel on the other side.

In frequent cases it might block the wheels of state, while the petty inquiry was being investigated whether one or the other of two persons was the legal incumbent, entitled to exercise the duties of the office and receive the pay therefor.

Well might the court say "the petty inquiry." It is so petty that, in my humble judgment, no court in this land has jurisdiction to consider the question who is or who is not the legal board of returning-officers for the State of Louisiana, and that the legislature has not vested the power in any one. Why? Because they are but special commissioners, appointed at different periods to discharge a special duty, and become *functi officii* as soon as the duty is discharged, without emolument. No amount is involved in the right to this office, if it be an office, because there is no emolument; and the jurisdiction of the district courts of this State is confined to matters where the sum of over one hundred dollars is involved. It is no office; because the Supreme Court of the United States has defined an office to be a permanent discharge of public duties by a person who is an officer of the government; and here is no permanent discharge of public duties. Every time that an election takes place under this election law, these men have to appear and take a new oath, and discharge the duties of returning-officers as to each election. If it be an office, then neither Herron, nor the governor, nor the lieutenant-governor could hold it; because article 117 of the constitution declares that "no person shall hold or exercise at the same time more than one office of trust or profit, except that of justice of the peace or notary public." These officers are special commissioners, appointed at intervals, for a special purpose, and at special times. The law creates a special and peculiar court, from which there is no appeal.

Therefore, the subject-matter is not within the jurisdiction of any court, because the intrusion act is confined to officers; and it is not an office, for the reason that I have stated, nor is it the exercise of a franchise. Although the judge of the eighth district court did, in his opinion in regard to this subject-matter, intimate that a court might entertain jurisdiction over this question, because these men were exercising a franchise, he totally misapprehended the character of a franchise. A franchise is in the nature of a grant made by the government to a citizen, giving him peculiar privileges; it is in the nature of a privilege; it is a contract between the citizen and the government, which in the celebrated case of the Dartmouth College was held to be a contract which could not be violated by the State. Offices, under the political theory of this country, are not hereditaments, as they are styled in the English law-books under the English system; but they are considered as mere powers, to be exercised for the benefit of the public.

Therefore, this office is not a franchise in the sense in which that term is used in the law of 1868 in regard to the unlawful exercise of offices or franchises. Therefore, sir, I say that there is no court that can take jurisdiction over the subject to determine who is the legal board; that a member of it is not an officer; that he is a mere commissioner, such as the supreme court of the State of Louisiana held him to be when, in the olden times, in an effort on the part of a democratic legislature to repress the violences incidental to a party, at that time termed the "Know-Nothing party," they created a central board of election in this State, and Mr. Moise, then attorney-general here, having been, by the enactment, made one of the commissioners, the question came up before the supreme court of the State whether or not he could exercise the duties of commissioner, the objection being that it was an office, and that it was incompatible with his position as attorney-general. The supreme court of the State held that it was not an office; that he was performing duties simply as a special commissioner, and that therefore it was not incompatible with the position which he held as attorney-general of the State. I allude to this for the purpose of showing that these commissioners of election, appointed only at a time when an election is held, are not officers in the sense contemplated by the law which authorizes suits to be instituted for ejectment from office. It is important that courts should not have jurisdiction over such matters, because it is manifest that a corrupt judge could easily put in whom he pleased and put out whom he pleased, without any appeal to the highest tribunal of the State, because the amount involved in the contest for the position would not reach five hundred dollars, there being no emolument attached thereto. It was never intended to place any such power in the hands of any inferior tribunal. Therefore, sir, I say this question is entirely beyond your jurisdiction; you have not the right to make any inquiry into it at all. All you are authorized to do is to recognize Governor Warmoth as vested with control over this matter of determining what board is the legitimate board. Notwithstanding that efforts have been made, as I have been told, to produce the opposite result, in the interest of those engaged in the conflict in regard to this election, still Governor Warmoth is recognized by the Chief Executive of the nation as the legitimate governor of this State, and as such in the discharge of his duties; and you are bound to recognize him, and to recognize those persons as officers whom he recognizes as officers *de facto*, particularly when the law, under which in this case he recognizes Dul'onte and Hatch as the legitimate officers, gives him the right, the political right, without control over him by any court, (because no court has jurisdiction,

as I have shown,) to determine the question as to which is and which is not the legitimate board of returning officers. He alone is authorized to declare before whom he will open the returns; he is the one to whom the returns are transmitted, and who acts as their custodian, and it is through him that they are submitted to the board for examination. What that board shall be, and of whom it shall be composed, is fixed by law; and no matter what person the governor determines shall occupy *de facto* the office of commissioner, there is no tribunal in this land that can revise his judgment.

It is unnecessary for me, may it please your honor, to read authorities to show that there is no presumption of jurisdiction. The Supreme Court of the United States has held that there is no such presumption, and that it must be established affirmatively. (4 Dallas, 8; 5 Cranch, 153, &c.) Nor is it necessary for me to read authorities to show that the jurisdiction of the circuit courts is special. They have no probate jurisdiction, and cannot determine any matters in regard to divorce. (18 Howard, 350; 21 Howard, 352.) These authorities are mentioned to meet the proposition of the counsel on the other side, that this was a general equity jurisdiction that this court was called on to exercise under these constitutional amendments.

A court of chancery will not enjoin an officer in the performance of the duties of a public office not merely ministerial. (1 Cranch, 166; 12 Peters, 524; 14 Peters, 497; 6 Howard, 100.) It is unnecessary for me to read the authorities on this point; the law is too plain.

The most recent case on that point is 7 Wallace, 487, where an effort was made to enjoin the Secretary of War, and the court said there was no authority for it to control him in his action. A court will not enjoin the performance of public duties by any public officer.

I also refer your honor to 6 Wallace, 407, and the case of the State of Mississippi against President Johnson, in 4 Wallace. There an effort was made, upon the ground that the reconstruction acts of 1867 were not constitutional, on the part of the State of Mississippi, to enjoin President Johnson from the execution of those laws. The Supreme Court of the United States said it would not entertain jurisdiction over the case, for the reason, among others, that a court of chancery never does interfere to arrest a public officer in the performance of his public duties.

Now, sir, the argument which I have addressed to your honor presupposes that this board which your honor has enjoined, and which the State court has enjoined, is in existence. I deny the proposition; and if I succeed in maintaining that the law creating this board is repealed and the board annihilated, I presume that, whatever may be the views of your honor on every other subject connected with this case, you must refuse to grant this injunction, for the reason that the only board against which the injunction is asked, the only board which it is charged is going to commit these enormous frauds, is the board composed of Hatch, DuPonte, Wharton, and the governor, which has been dissolved. Now, if the governor has voluntarily cut off his own head and the heads of his colleagues, so as to do away entirely with the pretense of fraud charged in the bill, why, of course that is an end of the case. I presume that is a manifest proposition; so manifest, that your honor seized upon it in advance, and was perfectly amazed, no doubt, at the learned counsel who opened the case touching so lightly upon it, because it saves all of this lengthy investigation. I have been compelled to argue the case as I have done, because the learned gentlemen on the other side have already thrown out an intimation that this *coup d'état*, as they call it—this exercise of a constitutional function, as I call it; this act for which

Governor Warmoth should be imprisoned, as they say; this act of the executive of the State, which he could not have performed in the exercise of his discretion, as I say—was not intended in earnest. As if the governor of this State had merely for a little side-play signed a bill, and that the parties were playing with one another a mere game, without reference to practical results. That was the intimation that was thrown out.

I say, sir, that that law was signed with no other object in the world than to throw the question of who is or who is not elected into the hands of the men charged on neither side with fraud. That law was approved by my advice, and for that purpose; and if I fail to accomplish the object contemplated. the reason will be twofold: First, my want of knowledge of the profession, as to what the effect of it would be; second, my want of judgment in regard to what I supposed would be the result, which was, that both the contesting boards would come in and say, "Now let this new board be elected by the senate, and let us settle this unseemly controversy and cease this bickering, and put an end to these charges of fraud and criminations and recriminations." But, sir, the peace offering which has been made is rejected with taunts and with scorn; it is rejected by the insinuation that it is a mere *coup d'état*, made with the object to gain some mere political advantage over a political opponent. Having been met in that spirit, the only thing left here for us to do is to assert our legal rights before this court, and to present them in the manner in which they have been presented to the minds of counsel engaged in advising the governor as to the effect of that law, and let your honor determine who is right and who is wrong. Remember that this olive-branch was held out under these circumstances: that the new law expressly provides that this board to be created shall be selected by the senate from men composed of both political parties—of *all* political parties. In this case there would be, I suppose, a straight-out democrat; there would be a liberal republican; there would be a radical republican; and then there would be some sort of a fusion man, as they call it; then—I forget what other names they have—but all the varieties of political parties would be represented. This is the proposition we now offer; this is what we are now seeking to accomplish by asking your honor to stay your hand. All that we ask is for the United States Government to stay its hands: let this new and impartial board thus selected under the new law go into operation, examine the returns, and proclaim the result. They refuse the proposition; we ask your honor to enforce it.

In the first place, I have authorities to the effect that a law of the State of Louisiana may take effect from and after its passage without promulgation. I produce these authorities, as I do not know what questions might hereafter be raised. I refer to 2d Annual, p. 86; 8th New Series, p. 843; 13th Annual, p. 502; 14th Annual, p. 486. In the second place, that the governor of this State is authorized to sign a bill during vacation. (Belden *v.* Hagan—the Slaughter-house case—22d Annual, p. 548.) There the supreme court settled that proposition. The next question is, what is the effect of this new law upon this board, or upon the law creating this board? The act is act No. 98, and is entitled—I read from the New Orleans Republican—

An act to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives; and to enforce article 103 of the constitution.

Now, the repealing clause is as follows:

Be it further enacted, &c., That this act shall take effect from and after its passage, and that all others on the subject of election laws be, and the same are hereby, repealed.

There is no question, therefore, that the legislature intended that this law should repeal all other acts of a similar character. There is nothing said about laws in conflict with this, nothing about revision, nothing about amendments. They embraced in one comprehensive system, under this act 98, all the law regulating the subject of elections in this State, and repealed all other laws on that subject. This, then, is the law of the land. The second section provides as follows:

That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections.

So that it creates a board in an entirely different mode from that adopted in the preceding law. That act recognized as members of that board certain parties by name, to wit, T. C. Anderson, John Lynch, and the governor, the lieutenant-governor, and the secretary of state, *virtute officii*. The legislature itself, I say, selected by name two of the members of this returning-board, and designated certain officers as constituting the other three. This last act throws the duty upon the senate of selecting this board from time to time, and declares that it shall be selected from all political parties. There is no term to the office or to the performance of its duties. The election must be held by the senate every time a State election takes place; whereas under the old law Anderson and Lynch were permanent members, and the other three were members as long as they remained in their places as governor, lieutenant-governor, and secretary of state. These are the differences in the constituent elements of the two boards. Your honor will perceive that this law contemplates at every election a fair return, through the instrumentality of persons selected, for the time being, by each successive senate. Now, why is it that this law, which is explicit, does not repeal all preceding acts? The gentleman referred me to a case in the Supreme Court of the United States, reported in 2 Wallace, which has nothing whatsoever to do with the principle involved in this case. What is that case? A pilot, who exercised a certain authority under an act of 1861, in California, had performed certain duties, for which he was entitled to so much compensation. A subsequent act repealed that law, and instituted a new mode of piloting. He, having performed the services while the previous act was in existence, claimed his compensation. The Supreme Court very correctly decided that the repeal of the law, by which the mode of pilotage was changed, in no manner affected his right to his compensation, which had accrued under the act which was in force at the time that he rendered the services. I would not contend for the opposite proposition. In the course of its decision the Court says:

And it is clear that the legislature did not intend, by the repealing clause in the act of 1864, to impair the right to fees which had arisen under the original act of 1861. The new act re-enacts substantially all the provisions of the original act relating to pilots and pilot regulations for the harbor of San Francisco. It subjects the pilots to similar examinations; it requires like qualifications; it prescribes nearly the same fees for similar services; and it allows half-pilotage fees under the same circumstances as provided in the original act. It appears to have been passed for the purpose of embracing within its provisions the ports of Mare Island and Benicia, as well as the port of San Francisco; of creating a board of pilot examiners for the three ports, in place of the board of pilot commissioners for the port of San Francisco alone, and of prohibiting the issue of licenses to any persons who were disloyal to the Government of

the United States. The new act took effect simultaneously with the repeal of the first act; its provisions may, therefore, more properly be said to be substituted in the place of, and to continue in force with modifications, the provisions of the original act, rather than to have abrogated and annulled them.

Therefore this is an authority for saying that if this old act is continued in force at all, in consequence of some of the provisions being the same in the new act, it is only considered in force with the modifications made by the new act; and the most important modification is that the board is not designated by the legislature as being composed of the governor, the secretary of state, and lieutenant-governor, but is to be selected by the senate. If your honor will read the act through, you will find that it was contemplated that it should be put in operation so as to govern the election of 1872.

But, sir, it is said that this election is a unit; that the law which was in existence at the time the ballots were cast the legislature has no power to change, so far as the counting of the votes is concerned. In other words, it is contended that the legislature had created a board with power to investigate into the results of this election, which board has been arrested in its action; and that the legislature, if it were to assemble now, could not put an end to this litigation by an express enactment that these returns shall be submitted to somebody else. Is not that the proposition? Is not that the ultimate result of the principle advanced? For if the election is such a unit that it is indivisible—that it is, like an immaterial substance, not capable of parts, and that therefore it is utterly impossible to divide it—then the legislature cannot assemble to-morrow (although there is no question about the legality or constitutionality of its assembling) and pass an act which will, in express terms, take this disagreeable controversy out of the hands of the judiciary. Certainly no such construction as that will prevail. What, then, is the character of this board? Is it not, as the counsel himself admitted in the opening argument, a tribunal or court of a special character, constituted for a special purpose, to investigate into and determine these questions in regard to the returns of the election? The reading of the act will satisfy any inquiring mind that that is the nature of this board; that it is a court of special jurisdiction, created for special purposes, and exercising discretionary power in particular cases. The supreme court of this State has recognized as a court a similar tribunal, which is charged with the duty of registration of voters.

Now, may it please your honor, was it ever heard of in a court of justice, that when a court which is trying a case is deprived of jurisdiction over that case, it nevertheless could proceed to adjudicate it? Why, sir, one of the most remarkable cases that ever occurred in the history of this country shows how fallacious the argument is. Do you remember that, under the construction of the Constitution of the United States anterior to the adoption of the eleventh amendment, States might be sued by citizens? After that amendment was adopted, the question came up in the Supreme Court of the United States as to the effect of the adoption of that amendment upon the suits then pending in the courts. If you examine the language of the eleventh amendment to the Constitution, you will find that it declares that the article shall not be so construed as to apply to any suit of a citizen against a State. There is no prohibition; there is no repeal; it is simply an amendment, that it shall not be so construed. In 3 Dallas, p. 378, the Supreme Court of the United States held that the eleventh amendment applied to suits at the time the amendment was adopted as well as to suits brought after it; and therefore that, in the case then pending, the Supreme Court of

the United States was deprived of jurisdiction. Again, the Supreme Court of the United States has held that where an appeal is taken from a judgment, which judgment was correct at the time it was rendered, because of the law then in force, and pending the appeal the law was repealed, the appellate court is bound to reverse the judgment, because it must be a correct judgment at the time that the final adjudication takes place. That, sir, was decided in the case of Peggy, 1 Cranch, p. 180. Justice Martin, in 17 Louisiana, decided that an action begun under a law and not perfected under it becomes void. Therefore, any proceeding begun by these commissioners under this law, and not perfected under it, is entirely void. That this board is a court, or in the nature of a court, was decided in a case reported in 12 Annual, p. 140, in terms which seem to cover this point entirely. In order not to detain your honor much longer on this subject, I will refer you to a synopsis of all the law pertaining to the effect of repealing statutes, contained in Smith on Statutory and Constitutional Construction, sections 765 and 766:

It has been held that the repeal of a statute conferring jurisdiction took away all right of proceeding under the repealed statute, even in regard to suits pending at the time of the repeal. (Butler *v.* Palmer, 1 Hill R., 324.) This rule has been applied in regard to penal statutes, as I shall have occasion hereafter to show; and the same rule has been held as to the consequences of the repeal against a civil right, so long as it remains inchoate. Such was the case in the case of Miller, (1 Blackstone R., 451.) In that case the repeal was held to work the same consequences against a civil right. Miller, an imprisoned insolvent, had been compelled to assign his property, and was entitled to be discharged by an order of the court of quarter sessions as early as the twenty-sixth of September, 1761. But the 2 George III, ch. 2, had already passed, repealing the compulsory clause—such repeal to take place from and after the nineteenth of November of that year. The insolvent urged his discharge, but the sessions adjourned from time to time till after the nineteenth, then refused to grant it on the ground that the repealing act had taken place. On motion for a mandamus, Lord Mansfield, chief justice, delivered the opinion of the court, and held that no jurisdiction now remained in the sessions. He cited the repealing clause, which, to be sure, was very strong, that from and after, &c., the same is hereby repealed, *to all intents and purposes whatsoever*. But this, according to what was held in Surties *v.* Ellison, and other cases on the repealing clause, in 6 Geo. IV, ch. 16, was no more than a simple repeal. The first section of the 6 Geo. IV simply repealed all the previous statutes of bankruptcy; but by the last section the section was not to take effect till the first of September, 1825. And there being no saving clause as to acts of bankruptcy committed, or any inchoate proceedings under the former acts, it was held that the court had no power to imply a saving clause, although it was plain that by a mere inadvertence in legislation the kingdom was left for a time entirely destitute of its bankrupt law. The court was pressed for a construction which might avert so great a general evil. But Lord Tenterden said, "We are not at liberty to break in upon the general rule:" though he admitted that it was very unfortunate that an act of so much importance should have been framed with so little care. In a previous case Best, C. J., said, that on the first of September all former acts were entirely got rid of. (Meiggs *v.* Hunt, 12 Moore, 357, 359; S. C., 4 Bing., 213.) In a subsequent case a struggle was made to save a deposition as evidence which had been taken to support a commission of bankruptcy under the former statute, (5 Geo. II, ch. 30, sec. 14,) but which deposition did not happen to have been enrolled as that section required, in order to make it admissible.

A stronger case could not be put.

It was in all other respects completely under the former statute; but the party inadvertently omitted the act of enrollment till after the repealing clause took effect. And the court held that no right remained even to enroll, although the repealing act provided the like power of enrollment in proceeding under itself. In short, after much consideration, the court declared that the clause operated as a simple repeal; and Lord Ch. J. Tindall laid down the rule applicable to such a case. He said, "I take the effect of a repealing statute to be to obliterate it (the statute repealed) as completely from the records of the Parliament as if it had never passed, and that it must be considered as a law that never existed, except for the purpose of those actions or suits which were commenced, prosecuted, and *concluded* while it was an existing law."

Section 766. It will be perceived that the rule laid down in this and several other

cases has no respect whatever to the circumstance that the repealed statute was either of a criminal or jurisdictional character. Nor is it perceived why, in cases of civil rights, an exception is not just as practicable in favor of a jurisdiction given to enforce the right, as to the right itself. On authority then, at least, no rights arising under the repealed statute can be saved except by express reservation in the repealing statute, or where those rights have been perfected by taking every step which depended for its force on the former act.

There is a full discussion of the subject, but I extract only the cream, in order not to detain your honor or fatigue myself by reading three or four pages of similar law. Your honor need not look beyond this book for all the authorities on the subject, unless there are some which have arisen since the publication of this work. If, sir, I am right in this proposition, there is an end to this litigation, because there is nobody to enjoin. The plaintiff and defendant are dead. The plaintiff board and the defendant board are "gone where the woodbine twineth;" and your honor, therefore, is relieved from the necessity of investigating this question of fraud.

But suppose I am mistaken as to that, who brings this suit? William Pitt Kellogg, a Senator of the United States at the time of his nomination, a Senator of the United States at the time of his alleged election, a Senator of the United States at the time this board was proceeding to canvass these returns, a Senator of the United States at the time of the institution of this suit, a Senator of the United States at the time of the argument of this cause. Is he in a position to question this election? Is he, under the constitution of Louisiana, entitled to this office if elected? If not, there is no use in making any investigation as to whether he was or was not elected; for, if he was ineligible at the time the election took place, if ineligible at the time that this suit was instituted, if ineligible now, he has no interest in raising these issues, he has no interest in coming forward and making these charges. Your honor will remark that he files his bill upon the ground that he will at some future day institute a suit to claim the office of governor. It is a promise upon his part which he is not bound to fulfill; and if he did violate his promise I don't believe that many tears would be shed in the State of Louisiana in consequence of it. The question presented here is not only one of eligibility under the constitution, so as to render the election as to him void, but it is also a question whether or not his eligibility depends upon his own volition, taking the other view of the case. The question is, whether this court can be called upon to make an idle investigation into a complicated case, which investigation may turn out to be utterly worthless and useless, or its utility would depend entirely upon the whim or caprice of Mr. Kellogg in the future. Your honor will perceive that I draw a distinction between the two propositions. One applies to absolute ineligibility, so as to defeat him at all times for the office; the other is a question of *standi in curia*. Does he come into this court clothed in those garments which would entitle him to be considered in the investigation of this case? Is he now indued with the garments of eligibility, if I may so term it? He was at the time of his alleged election, at the time of the institution of this suit, and is now, so far as our constitution is concerned, excluded from the church. He is an unbaptized infidel, to use ecclesiastical language to express the idea. Can he come into this Christian court until he has the sign of the cross upon him, to show that he is entitled to recognition as within the fold—as being eligible to that station to which he aspires? Now, sir, what does the constitution of the State say upon this subject? Article 52 says:

No member of Congress, or any person holding office under the United States Government, shall be eligible to the office of governor or lieutenant-governor.

Mark you, this article does not use the language used in the Constitution of the United States, which says that no person shall be a Senator or Representative unless he possesses such and such qualifications; that is, that he cannot *act* as Senator or *act* as Representative if he is not so and so. This article of the State constitution does not say that no person shall be governor or lieutenant-governor who holds an office under the United States Government; for then, clearly, if he did not hold such an office at the time that he qualified there would be no prohibition. The language used is, that he shall not be *eligible* to the office of governor or lieutenant-governor. There was another article of the constitution which declared that the governor should be ineligible to the governorship for the succeeding four years after the expiration of the term for which he shall have been elected. That article has been stricken out; but I refer to it as being in the constitution at the time that article 52 was adopted, to show what was in the mind of the framer of the article at the time it was conceived. Another article says that "no person shall be *eligible* to the office of governor or lieutenant-governor who is not a citizen of the United States, and a resident of this State two years next preceding his election." So that whenever the word "eligible" is used it refers to the time of election. "He shall not be *eligible* to the office of governor," &c; "the governor shall be *ineligible* for the next succeeding four years;" "no member of Congress," &c., "shall be *eligible* to take the office of governor or lieutenant-governor." Does that term "eligible" apply to the time that the election is held, or does it apply to the time that the party may select, at his own volition, to qualify, in order to exercise the functions of the office to which he has been elected? What need, sir, was there to place in the constitution a prohibition that no member of Congress or person holding office under the Government of the United States should exercise the office of governor or lieutenant governor? Because it is a physical impossibility that they should exercise both functions at the same time. He could not be in his seat in the Senate, he could not be a member of the Cabinet, and at the same time be the governor. That, clearly, was not within the contemplation of the framer of the constitutional article.

If I were permitted to roam into the field of imagination, I think I could well picture the views that operated upon the mind of the person who first conceived that article; for it is but a copy from other constitutions, and preceding constitutions of this State. I can imagine that he might have seen, in the dim vista of the future, a custom-house surrounded with Gatlin guns, and United States officials in charge of a republican convention; he might have imagined a convention assembled in some country parish of this State, presided over by the United States surveyor of this port, controlled and manipulated by the United States marshal, supported by United States employés, from whose salaries five per cent. would be exacted in order to be successful in securing the nomination of some chief officer of the United States Government. He might have imagined a convention controlled by deputy marshals, who would allow nobody to enter unless pledged to the support of a particular candidate, who would be an officer of the United States Government. I could draw a picture of influence and power which the framer of this article must have foreseen, and which he desired to prohibit or prevent, and could only do so by declaring that the person in a position to exercise such enormous power in regard to the election of proper officers of the State should not be allowed to do so in his own interest. And, sir, if I am accused of having overdrawn the picture, I think I could with safety appeal to one of the learned counsel on the

opposite side to defend me from the accusation. He will testify that the picture is not merely one of imagination, or, if it be imaginary, is not overdrawn, but true to nature. I say, sir, this article of the constitution was inserted for the express purpose of preventing the exercise of this overwhelming influence, which might be brought into play by any person high in the confidence of the United States Government, by controlling all of its officials within the boundaries of the State in order to secure the nomination and election of some favorite of that Government. That should be the construction placed upon the article in order to arrest this evil; and it *is* the construction which has been placed upon a similar constitutional article by the supreme court of California, where the question has been discussed and decided.

I read from 15th California, 118:

Under the twenty-first section of article 4 of the constitution of this State, a person holding the Federal office described in that section is incapable of being elected to a State office; he cannot receive votes cast so as to give him a right to take the State office upon or after resigning the Federal office. The word "eligible" in this section means capable of being chosen—the subject of selection or choice.

That is the head-note. The article of the constitution referred to is as follows:

No person holding any lucrative office under the United States or any other power shall be eligible to any civil office of profit under this State: provided, that offices in the militia, to which there is attached no annual salary, or local officers and postmasters, whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

The court goes on to say:

The counsel for the appellant contends that the true meaning of the constitution is that the person holding the Federal office described in the twenty-first section is forbidden to take a civil State office while so holding the other; but that he is capable of receiving votes cast for him, so as to give him a right to take the State office upon or after resigning the Federal office. But we think the plain meaning of the words quoted is the opposite of this construction. The language is not that a Federal officer shall not *hold* a State office while he is such Federal officer, but that he shall not, while in such Federal office, be *eligible* to the State office. We understand the word "eligible" to mean capable of being chosen—the subject of selection or choice. The people in this case were clothed with this power of choice; their selection of the candidate gave him all the claim to the office which he has; his title to the office comes from *their* designation of him as sheriff. But they could not designate or choose a man not eligible—*i. e.*, not capable of being selected. They might select any man they chose, subject only to this exception, that the man they selected was capable of taking what they had the power to give. We do not see how the fact that he became capable of taking the office after they had exhausted their power can avail the appellant. If he was not eligible at the time the votes were cast for him, the election failed. We do not see how it can be argued, that by the act of the candidate the votes, which when cast were ineffectual, because not given for a qualified candidate, became effectual to elect him to office. Can it be contended, that if Grow had not been a citizen of the county or of the State at the time of the election, or had been an alien at that time, that the bare fact that he did so become a citizen at the time he qualified would entitle him to the office? Or suppose a man, when elected, under sentence and conviction for crime—if such a case can be supposed—would a pardon before qualification give him a right to hold the office? When the words of the constitution are plain, we cannot go into curious speculation of the policy they meant to declare. It may, however, have been a part of the policy of the provision quoted to prevent the employment of Federal patronage in a State election.

Therefore, sir, I say that he has no right to this office, if elected; he has no right to say to the people of this State, "Vote for me at your election, and then, if I choose to take the office I will take it; if I choose to put myself in a position to qualify I will do so." It would then be a matter depending entirely upon his own volition. Why, sir, to such an extent is the doctrine carried, that a party must be eligible at the time of the election, that there are decisions of the high courts in England

to the effect that votes given for an unqualified or ineligible candidate, at the time of the election, are votes thrown away, and cannot be counted. In the celebrated case of Gosling *vs.* Veley *et al.*, reported in 7 Adolphus & Ellis, N. S., the court of king's bench, Lord Denman, decided that votes given for a person who is notoriously unqualified are votes thrown away, and that the party qualified receiving the next highest number is elected. The same doctrine has been pronounced in the case of The People *vs.* Clute, reported in October, 1872, where the supreme court of New York, after a most elaborate investigation into the case, held that votes cast for a candidate by persons having notice of his ineligibility were void. That is a case in which this whole doctrine is examined. I will not tire the court by reading the decision. The point is, that ineligibility at the time of the election renders the votes cast for the ineligible candidate void, and therefore he cannot qualify himself for an office to which he is not elected, from the fact that the votes cast for him cannot be counted at all. If that be true, it is perfectly immaterial how many frauds Governor Warmoth and his board may commit, so far as this complainant is concerned.

But, sir, suppose I am wrong as to that proposition. I still take the ground that this court's time cannot be encroached upon to adjudicate future rights which may never arise. If the complainant comes here claiming that this court has equity jurisdiction to issue this injunction for the purpose of perpetuating testimony to be used in a suit that he intends to bring, he must show that he is in a position to bring that suit; he must show that he is in a position now to stand in court. He could not bring a suit for the office of governor as long as he occupies the position of United States Senator, because he has no interest involved which would be recognized in a court of justice.

If the court should render a decree in his favor he could not take the office. He is not debarred from the office by denial of the right to vote on account of race, color, or previous condition of servitude; but he is debarred the office by virtue of the constitution of the State, which says that no Senator of the United States shall hold the office of governor, or be eligible thereto. He is now, being in the position of Senator, without right to bring this suit, because he is not capable of holding the office. Will your honor, therefore, allow the valuable time of this court to be wasted in going into an investigation to determine these momentous questions of fraud between these parties, and to determine these momentous constitutional questions, and after you have done so, for Mr. Kellogg to turn around and put the decision in his favor in his pocket and go away from the State, because he does not choose to be qualified and resign his office under the United States? It is a different case where a man is qualified at the time of his election. He can go into a court of justice to have his right asserted, and then, if he does not choose to exercise it, it is his business; but his right is a personal right; it is a vested right. The decision of your honor now would not be in favor of any personal or vested right, or of any existing right; but in favor of a possible condition of things which may or may not arise. It seems to me that, under the decision of the Supreme Court of the United States in the case of Cross and Du Valle, reported in 1st Wallace, this court is not going to lose its time upon the adjudication of prospective, contingent future rights. The book is not here, but I assert the proposition. It was a case where the parties called upon the court to decree what would be their rights on a future contingency; and the Supreme Court of the United States cited with approbation the opinion of Lord Justice Turner, of the court of chancery appeals

of England, to the effect that the time of the court must not be allowed to be wasted in the adjudication of future rights, but that the party seeking relief must have some vested right at the time.

Now, may it please your honor, I believe I have discharged the duty which was imposed upon me in the opening of this case on behalf of the defense. I have presented all the law which I think we will present, so far as the principles which I contend for have been discussed. What I have to say in conclusion is this: that upon a motion for an injunction, the universal rule in chancery is that the court will not intervene to restrain any one from acting merely upon the allegation that certain apprehended frauds are about to be committed, without specific allegations and proof, outside of the mere allegations, of the frauds which it is apprehended the party will commit. I read from 7th Robertson's New York Reports, 280:

> The bare allegation of a fear that defendant is about to do some act, without alleging the facts and circumstances which *prima facie* justify such fears, will not authorize an injunction to restrain the commission of an apprehended act.

The other principle to which I desire to call the attention of the court is, that on a motion for an injunction, where the affidavits and the answer deny all the allegations in the bill, the injunction, if issued, should be dissolved; and, of course, on a rule *nisi* the injunction should not issue at all. (3 Roberton's N. Y. Reports, 523; 26th Maryland, 82; 37th Georgia, 392; 4th New Jersey.) And where collusion and fraud are charged, the answer of one defendant is considered sufficient for all. Now, sir, that being the case here, we have nothing but the bare allegation of William Pitt Kellogg that the governor and these gentlemen are about to commit these enormous crimes and offenses, in which he charges that a contract was made with every supervisor of registration, before his appointment, to carry out this contemplated scheme by which the voice of the people was to be defeated—an allegation, sir, which the statutes of the State prove to be false, because the registration law was passed in 1870, which requires the appointment of registrars throughout the State, and of the chief registrar, whose office should continue for two years; and the chief registrar of this State had been in office two years before this election. This complainant, Kellogg, was nominated for office, as sworn to in the answer, in July, 1872, and the presumption is that the governor of this State exercised his duty under the registration act in the appointment in 1870 of these officers. There is no allegation in the bill that he removed those who were incumbents and put in new ones for the purpose of carrying out and perfecting this conspiracy. So that the very first allegation in the bill—that the scheme was to control the votes of this State by these fraudulent appointments—is untrue, on the face of the statute of the State.

There is no allegation in the bill, in regard to the election commissioners, that these frauds were to be committed by the commissioners of election. Their reputation, at least, is unsullied and unstained, so far as this complainant is concerned; and the frauds in regard to suppressing votes could not be committed, except through the instrumentality or the fraudulent conduct of the commissioners of election. Your honor will notice, that of the ten thousand voters alleged to have been excluded from the right of voting, not one single solitary voter has had his affidavit filed in this case to show that he was so excluded on account of race, color, or previous condition of servitude. If we are to take the three or four affidavits which I have read as a sample of the five thousand which they say they will file, there is not one to the effect that any man was excluded from registration or voting on account of race, color,

or previous condition, and not one deponent swears that he is a colored man; and yet, sir, this restraining order has been issued upon that foundation. The gentleman says that these are samples; if they are samples, not one of them is admissible in evidence; and I suppose, without examining the whole bundle of merchandise which has been brought in here, that they correspond to the samples. Not one of them, therefore, comes within the act of Congress, entitling such votes to be counted, because the allegation in the bill is that they were excluded from voting because they were excluded from registration. It is not pretended in the bill that anybody was excluded from voting who was registered. The only allegation, so far as votes excluded are concerned, is that they were excluded from registration. In that event, they must prove that they made affidavits before the registration officers, at the time they offered to register, that they were refused on account of race, color, or previous condition of servitude; and then with those affidavits they must make new affidavits that they were refused the right to vote at they polls upon the affidavits made at the time of registration. Read the act of Congress, and you will find that the second and third sections require that it should apper by affidavit that the party was refused registration on account of race, color, or previous condition, and then by a second affidavit that he was refused the right to vote on that account, though he produced the first affidavit to the commissioners of election. I say, sir, that there is not a solitary affidavit of any man here who swears that he was rejected for other causes than the want of registration, and not one swears that he was rejected on account of race, color, or previous condition of servitude.

You can estimate from these samples the value of the other allegations contained in the bill. Wherever we have had the slightest opportunity to examine anything outside of the oath of this remarkable man, charging this remarkable fraud upon this number of men throughout the State, we contradict him. If he refers to the law, we contradict him. If he produces affidavits, they themselves contradict him. In the affidavit of Antoine, the candidate for lieutenant-governor, and also United States officer, as to the rejection of five hundred votes in the parish of Caddo, he does not swear that those votes were registered or were refused registration. He swears, in substance, that he knows of his own knowledge, and from information derived from others, that five hundred men were on election day refused the right to vote on account of race, color, or previous condition. He does not say that they were registered voters. He does not swear, so far as I know, that any one was refused the right to register. I would like to know whether any of the large number of affidavits filed to day are from the parish of Caddo—I don't know, as I have not examined them. The complaint also brings the affidavits of the two Lotts and of Kelso, that fifteen hundred legitimate votes were refused registration in the parish of Rapides, and that this was done in the months of September and October. Why was not your honor appealed to prior to this election? This court had jurisdiction in the matter. The act of 1872 required this court, at the instance of the United States marshal, to go up there in the neighborhood of Rapides, if there had been any such refusal on account of race, color, or previous condition, and to enforce the rights of these men. Was your honor ever called upon to go there and enforce these rights? You might have gone there in September and October, and, by the decrees of this court, have remedied these alleged frauds. These men, after remaining silent until after the election, are now brought up to support this monstrous and untruthful

bill, filed against the officers of this State, throughout its entire length, and against gentlemen of as high honor as any in this country.

The very vote published in the papers of these parishes will convince your honor, if you will read it, that these affidavits are false. Take the vote and compare it with the census of the United States as to population; take the vote cast by both parties in those two parishes of Caddo and Rapides, and I say that your honor will come to the conclusion that these affidavits are false. There was a larger vote for both parties in both of those parishes in 1872 than at any other election, and a very large one in proportion to the population of the State, white and colored. Therefore, sir, this bill stands without any support as to fact, except the affidavit of the complainant. Governor Warmoth has denied it throughout in the most formal manner, and all of the defendants to the bill have denied it. Upon the sworn denial of the defendants, then, on the motion to disolve, the preliminary injunction will be dissolved, and therefore, of course, it will not be granted upon the rule to show cause.

I have done, sir. If I have done nothing more in making this extended argument, I have vindicated a man who, whatever may have been his course in the past, at least cannot now be charged with doing anything detrimental to the interests of this State. I have shown that this suit is gotton up in consequence of political acrimony, arising out of personal difficulties and disputes in politics between these parties; that there is no foundation in law and no foundation in truth in the allegations contained in this bill; and that the only course which is left to your honor to pursue is to turn this party, so far as this injunction is concerned, out of court, and tell him there is no evidence which he has any interest to preserve, and that all the evidence he wants preserved is preserved for him in the public records of the country.

Circuit court of the United States, fifth circuit and district of Louisiana.

WILLIAM P. KELLOG *vs.* H. C. WARMOTH ET. ALS. } No. 6830.—In Equity.

ARGUMENT OF E. C. BILLINGS, ESQ.

May it please your honor, in commencing the argument in reply on the part of the complainant in this case, I wish to express the admiration which I have felt throughout the entire discussion for the bill drawn by my associate, Mr. Beckwith, as a specimen of equity pleading; a bill which, I take the liberty to say, I trust, without presumption, will, when the smoke of this contest is cleared away, and the weighty and deep purposes which now slumber in the amendment to the Constitution, called the fifteenth, and the statutes passed thereunder, are clearly understood, will then be recognized everywhere as presenting questions within the jurisdiction of this court as certainly as is any bill on the subject of patents. I appreciate, and admire, too, the learning, the method, great intellectual force, and eloquence of the four solicitors who have addressed your honor in behalf of the defendants. I think it may be safely said that with such an array of talent, and such ample opportunity for preparation, if the defendants have failed—as I think they have utterly—in their line of argument to show that the court is without jurisdiction, they have left altogether unobstructed the course of reasoning which

shows on the part of this court a jurisdiction comprehensive and complete. Indeed, so clear is my view of this part of the case that I think your honor will be recreant to your duties as a judge, placed here to administer the laws of the United States, if you do not extend the relief asked for, and that swiftly and with all the authority of the circuit court. I say I have enjoyed this discussion. But it does seem to me that when we come back from a consideration of the matters to which the eloquence of the defendants' solicitors have taken us, and look at the case before your honor, we shall see how few and simple are the principles really at issue, and upon which this case must be solved.

I propose in the first place to say a word upon the question of the eligibility of Mr. Kellogg to the office of governor. If the court pleases, this question may readily be disposed of by the simple remark that, this being a suit in equity brought in aid of a contemplated suit at law to test his title to the office of governor; the objection of ineligibility could only with propriety be urged in the suit at law. In that suit it will be an issue of fact, to be found by a jury under the instructions of the court.

Strictly speaking it is foreign to this case and cannot be here interposed; but the objection has so little weight that for one I should be perfectly willing to have it considered now and here in this case before your honor. The language of the provision of the constitution of the State of Louisiana, upon which defendants' solicitors rely, is as follows: "No member of Congress or any person holding office under the United States Government shall be eligible to the office of governor or lieutenant-governor." This provision—as has been correctly stated by the learned solicitor, Mr. Hunt, who preceded me—is found in the constitutions of 1812, 1845, and 1852. In the constitution of 1812 there is this difference, that another class of persons are declared not to be eligible, namely, "any minister of a religious society." This clause, "minister of a religious society," was omitted in the constitution of 1845, and in the subsequent constitutions. I desire to call your honor's attention in this connection to the fact that the constitutions of the other States have a similar provision, varying more or less, but substantially the same. For instance, the constitution of the State of Texas, section 13, article 7, contains the following provision: "No member of Congress, or any person holding an office of trust under the United States, or either of them, or under any foreign power, shall be eligible as a member of the legislature, or hold and exercise any office of private profit or trust in this State."

Now, if the court pleases, the question is, what do the words "eligible to the office of governor" mean? The dictionaries give two definitions to the word "eligible"—one, "capable of being elected;" the other, "capable of holding;" and the question is whether the framers of the constitution meant to prohibit the persons named from being voted for, or from holding the office. I think the ordinary definition was in the minds of the framers: that they meant to say that no man shall serve two masters; that no man should be so situated that his allegiance should be divided; that if he was an officer of the United States he should not hold the office of governor of this State. I think the *noscitur a socias* argument helps very much to bring us to this conclusion, for we find that the minister of a religious society was in the first instance within the exclusion. We find that in other States a person holding any office under a foreign power or a sister State is excluded. I think the framers were not observing the nicety of the derivative meaning, but they struck at this idea of double masters, of double allegiance, in language which by the popular mind would be well understood to prohibit simply that.

I cannot yield my assent to the theory which has been put forward with so much plausibility and ingenuity, that the object of this provision was to prevent a candidate who was a member of Congress from using the patronage of that position during the canvass. When we consider that this provision originated in the year 1812, we readily see that such a suggestion would then have had very little force, for I think I am warranted in saying that at that time the patronage of a member of Congress was scarcely equal to that which is enjoyed by my friend Mr. Claiborne, the clerk of the district court, which is confined to the appointment of one or two deputies. The vision, therefore, which haunted my friend, Mr. Semmes, of seeing United States officers marshaled to secure a nomination, was forever remote from this provision. The provision had a meaning which is quite consistent with the words used if we refer to the tenacity with which at that time the doctrine of State rights were held, and the firmness and universality almost with which any encroachment upon the sovereignty of a State was resisted.

I see in this provision only a prohibition on the part of the State of Louisiana, with more or less of the attributes of sovereignty, that no person who held the office under the United States should hold the office of governor or lieutenant-governor.

A similar question has repeatedly come before both houses of Congress; and they have uniformly held that if the disability, whether springing from non-age or participation in the rebellion, did not exist at the time the member proposed to take his seat, that he should be seated.

By the COURT. There is a historical fact contemporaneous with the adoption of the constitution of 1812 which I will bring to the notice of the counsel on both sides. The late Governor Claiborne was the territorial governor of the Territory of Orleans, appointed by Mr. President Jefferson. At the time that that Territory was erected into the State of Louisiana he was elected the first governor of Louisiana under the constitution of 1812, and thus passed from the chair of the territorial governorship into the chair of the governor under the constitution.

Mr. BILLINGS, resuming. Such a contemporaneous construction, adopted, as we may say, by the very framers of the constitution, so clearly shows their meaning in this phrase as to take away the necessity of any further argument on that point.

I come now, if the court pleases, to the point raised by Mr. Justice Howe, which was in substance that the act passed by Congress in 1870, and the act amending the same, were unconstitutional. His view is, that the provisions of the Constitution known as the fifteenth amendment, simply prohibited a State in its capacity as a State from abridging the right of suffrage on account of race, color, or previous condition. I submit that this was the object of the fourteenth amendment, which provided in substance that if any class of persons were excluded from voting they should be excluded from the basis of representation in the lower house of Congress. But the fourteenth amendment, as I shall show in another connection, had proved utterly inadequate, and therefore it was that this all-inclusive, sweeping fifteenth amendment was submitted and ratified. I know not how Congress could enforce the fifteenth amendment, did the amendment simply speak of the action of a State. The article of the Constitution which provides a guarantee of a republican form of government to each State bears with it all the force which Mr. Justice Howe would attribute to this amendment. I think, therefore, that the object of the provision which we are considering was to reach much further, and prevent any State, through its officers under its laws, or under color of its laws, or under color of any

of its proceedings, from abridging practically—not simply in theory—the right to vote. I think this view is conclusively made manifest by the preceding and contemporaneous events, to which I shall allude in connection with the question of jurisdiction, and that when Congress by such an overwhelming vote enacted this enforcement act they were not mistaken as to the scope and meaning of this great amendment. I think the object of that amendment was to put it into the power of Congress, by any means which they judged requisite, to protect every citizen of every State practically and effectively in the exercise of his right to vote.

Then we come to the question to which all the counsel have more or less addressed themselves: Has this court jurisdiction of this case? and if it has, by virtue of what statute or what part of the statute?

In presenting my view of this question, I shall call your honor's attention to the laws of Congress which give jurisdiction, and then to the historical facts which go to show what remedies were intended to be afforded by showing what evils existed.

In the view which I shall have the honor to submit, the jurisdiction of the circuit court over the subject of preventing or interfering with the right of any citizen to vote on account of race, color, or previous condition, whether that attempt be made in the exclusion from registration, from casting a vote, or from having a vote effectively counted, is as complete as is the jurisdiction of the circuit court over the subject-matter of patents. The case has been argued on the other side as though the jurisdiction of the circuit court rested entirely upon the twenty-third section of the original act: but I think I shall show that there is a much broader jurisdiction in the act and in the amendment. I wish here to read the declaratory parts of the statute. The first section provides that "all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." Now, if the court pleases, that is the key-note to this whole statute. There is the declaration of what the members of Congress designed should be secured; there is the measure of jurisdiction which is given to this court; and all this notwithstanding the provisions of any State to the contrary. Then we come to the third section: "Whenever, by or under the authority of the constitution or laws of any State or Territory, any act is or shall be required to be done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance, or offer to perform, or acting thereon, be deemed and held in law as a performance of such act; and the person so offering and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act."

To make this section applicable to the case before us, they have said to your honor that, as a matter of law, whenever a person otherwise qualified has gone and desired to register and has been refused, and has been also refused the right to vote on account of race, &c., that he shall be deemed in law to have been a registered voter. Your honor will per-

ceive that the entire statute following goes through upon the basis of the first section. We come to the twenty-third section, which reads as follows: that "whenever any person shall be defeated or deprived of his election to any office, except elector for President or Vice-President, or Delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote on account of race, color, or previous condition of servitude, his right to hold and enjoy such office and the emoluments thereof shall not be impaired by such denial."

Here, then, the great principle is declared that whenever, on account of race, color, or previous condition, a vote has been rejected which would otherwise have been cast for a candidate, that candidate shall be deemed in law to have received that vote. Here, then, is a declaration by the statute—first, of the right to vote; second, of the right to vote although registration has been refused; and third, of the right to have the vote counted although rejected, provided the refusal and the rejection are in consequence of race, color, or previous condition; and the candidate is invested with the right to assert title to the office and to have and hold the office and its emoluments to the same extent as if the voter had been allowed to cast the vote, unjustly, and from partiality to race, refused.

I may call your honor's attention to the fact that these declaratory portions of the statute are also enforced by severe penal sanctions.

But it is enough for the purpose for which I invoke it that the statute in the clearest manner invests the voter and the candidate with these rights, and that the scope of the statute applies to the whole machinery of voting, from the commencement of registration down to the final announcement by the last officer of the result. The circuit courts of the United States being courts of limited jurisdiction, I admit that the mere statutory declaration of rights does not give the party aggrieved the right to come here for redress. But it seems to have occurred to Congress that such fundamental rights thus broadly stated needed a jurisdiction for their enforcement correspondingly enlarged, and that not alone at law, but in suits at equity the party may seek his remedy. Accordingly we find in section 15 of the amendatory act "that the jurisdiction of the circuit courts of the United States shall extend to all cases in law or equity arising under the provisions of this act hereby amended."

Now, may it please the court, I would like to have heard the solicitors upon the other side answer this question: What possible case in equity could, according to their theory, arise under this act? And I ask, can I be wrong in urging that whoever has his rights taken from him or threatened may have his appropriate remedy here at law or in equity? And is not the case made by the bill a case—from beginning to end—of attempted infractions of the complainants' right in violation of these two statutes? It seems to me clear that wherever an infraction of these rights has been consummated, it may be here redressed; wherever it is being attempted, it may here be prevented. That is to say, whatever right of action exists by law for wrongs done in violation of the declared rights under these statutes, the party may be compensated for here.

And whatever rights given by these statutes are threatened may be secured by the appropriate conservatory process of this court, sitting as a court of equity. The general proposition upon which this part of the argument rests is that wherever the statute creates rights there must be a proper right of action to the party aggrieved. To show that I am not mistaken, I desire to call your honor's attention to two cases. The first is that of "Van Hook *vs.* Whitlock," 2d Edwards's Chancery Reports,

page 308. In that case, the vice-chancellor, McCoum, at page 310, says: "Although the act is silent as to the form of action or the mode of enforcing the liability, there can be no doubt of the right of creditors to sue at law upon the statute, and it is immaterial to the present purpose whether the action should be debt, assumpsit, or on the case; it is sufficient that the law authorizes an appropriate remedy in some form or the other. *When the mere form of action or the action itself is not expressly given, it arises by implication.*" Chief Baron Comyn lays down the law that, upon every statute made for the remedy of any injury, mischief, or grievance, an action lies "by the party aggrieved, either by the express words of the statute or by implication. In Bullard *vs.* Bell, (1st Mason, 290–292,) Mr. Justice Story says: 'the result of this examination instructs us that the action to be pursued to enforce a statutable right, obligation or remedy for a grievance is not necessarily debt, but depends upon the subject-matter and nature of the provisions of the statute. But the action here spoken of (p. 290) is not any one specific remedy, but an action adapted to the nature of the case, and molded according to the forms and distinctions of the common law.'"

It may be an action of "debt, or assumpsit, or trespass, or case, as the particular nature of the wrong or injury may require." In this last case the statute which created the corporation provided that if it should fail to pay its debts, the stockholders should be liable therefor. A person who held one of the obligations of the corporation brought a suit, and the objection was raised that it could not be maintained because the statute had not stated in what way the liability of the stockholders should be enforced, and had not given specifically to the holders of the obligations a right of action. But the answer given by Justice Story was that wherever a statute declared a right, the party aggrieved—that is to say, the party representing the right assailed in violation of the statute—had his remedy and might enforce it in the proper form of action. Now, then, we say that wherever the declaratory parts of this statute, or the amendment thereto, have been violated, the fifteenth section of the amendment gives the party aggrieved his remedy by an action at law wherever the injury is accomplished and the object is to obtain compensation: by suit in equity whenever these provisions are about being violated, and the object is by conservatory process of the court to stay the hand of a wrong-doer from invading the rights thus declared, and especially may the court sitting as a court of equity extend its aid in all measures which are properly and usually ancillary to the suit at law expressly and particularly authorized in the twenty-third section of the act. Whenever then, as here, a party who has been under this statute elected to any office excepting that of member of the legislature, member of Congress, or presidential elector, desires to preserve evidence preparatory to a suit at law; or wherever, as here, there is a fraudulent intention to suppress and exclude from the effective count, by reason of race, color, or previous condition, any votes; or wherever, as here, the attempted fraud consists in denying, on account of race, to the voter, registration and subsequent voting, the voter being otherwise qualified; and that fraud is threatened to be consummated by refusing in opposition to the terms of the statute to give effect to such votes as if they had been cast in any of these cases, the jurisdiction of this court on the equity side is ample.

It is to be observed that the declaratory parts of these statutes—that is to say, the principles enunciated—are sought to be enforced in two ways: first, by criminal proceedings, with heavy penalties against the violators; and, next, the candidate of the refused voters is invested with

the authority to seek redress and prevention of the wrong done or attempted to the voter. Without both these means of enforcing the rights declared, how vain would have been these solemn enactments guaranteeing to a race, for the most part helpless, these sacred and fundamental rights! The wisdom of Congress is nowhere more signally illustrated than in these two methods, which they have provided as the bulwarks, so to speak, of the impartial suffrage of all citizens of the United States. This, may it please your honor, is a stern and practical grant and enforcement of rights which in constitutions and bills of rights have existed for a century. Does it secure more than free election—more than impartial suffrage—more than what the title of the act declares to be its object: the protection to every citizen of his right to vote? To my mind it is strict justice firmly applied. Tardy justice, and no more, means no more than adequate to the great end sought.

It is said that it is an entry into the domain of State rights. As State rights were maintained by Mr. Calhoun, the whole theory and doctrine of this statute is not only an entry into but a complete subversion of them. After the adoption of the fifteenth amendment the whole subject of suffrage in States, which is the beginning and end, the breath, the life, the controlling spirit of a republican form of government, has been placed within the control of Congress. I shall show later in the discussion that in the opinion of democratic senators these acts authorized in effect the canvass under the direction of the circuit court of the votes for all State officers, and by necessary consequence conferred the authority to stay a canvass which was avowedly entered upon with the purpose of violating these acts. It is idle for the gentlemen on the other side to speak of the restrictions in the provisions of the original Constitution of the United States, for the very object of the amendment was to do away with those restrictions. And when the fifteenth amendment declares there shall be no abridgment of the right to vote on account of race or color, and that Congress may enforce that provision by appropriate legislation, it is clearly competent to Congress to protect this right, either through the courts or by the armies of the United States. They have at present only sent a supervisor to each poll, and put into exercise the judicial power to correct and prevent frauds. Instead of this exercise of power being an excess of the grant, it does not begin to exhaust it. Congress may place a soldier at every poll throughout the land; and the military as well as the judicial power may be by them set in motion to protect and render sacred this right to vote.

It will aid us somewhat if we take a historic view of the political rights—or rather the political wrongs—of the class of people in this country who are chiefly sought to be protected by this provision, for the political status of the colored people residing in the Southern States has ever been involved in much perplexity to the framers of constitutions and makers of laws. When the Constitution of the United States was adopted the slaves were simply not mentioned, but included in a three-fifth clause excluding Indians not taxed, and the seed of our troubles was there sown in that evasive—and, I had almost said unmanly—way of authorizing a gigantic wrong. Trouble was ready to come from it, as it always is from unwillingness to grapple with wrongs. We know that it came in the grand collision in Kansas. For what was that struggle, except so far as it went to the question whether the right of suffrage for all citizens should go into the Territories? The doctrine of squatter sovereignty, so called, upon which one presidential canvass was made, was nothing more than an attempt to avoid a direct decision

of this question. Then came the Dred Scott decision. The advocates of slavery, which then had allied to it the financial and political power of the whole country, conscious of its intrinsic weakness, wished to place it in an intrenched position, and thus sought to place the colored man, if a descendant of a slave, forever outside the pale of citizenship. And so we find that seven out of the nine judges of the Supreme Court held that a free negro whose ancestors were brought to this country and sold as slaves could not be a citizen of the United States. (Dred Scott *vs.* Sandford, 19 Howard, 393.)

I pause here for one moment to say what a commentary have subsequent events furnished upon the attempt here made by such a powerful combination, so ramified, to prevent a slave or his descendant from ever asserting any right in the circuit courts of the United States. What a lesson does it teach? That he who in the name of law or constitution is attempting to perpetrate or perpetuate a wrong upon humanity is attempting that which must utterly fail, or worse than fail, and that nothing truly lives or survives, except it be founded upon principles of humanity and justice.

But time passed on, the year 1861 came, and with it the opening of the war.

Then the same question of the status of the slave—how he should be regarded and treated by the Government of the United States—was forced upon us. It came up to vex the governments on either side—the confederate and Federal; to vex that great and good man, Mr. Lincoln; to vex Congress, so much that the offer was made that if the South would emancipate the slaves they would be paid for; but still not disposing of them in reference to their political rights. Then there came the great military necessity for emancipation. And then came the end of the war, with four millions of people, under this Dred Scott decision, incapable of ever suing in the United States courts—less citizens, less entitled to the rights of citizens than any alien who had never seen the United States. Then came the thirteenth amendment, simply declaring that slavery and involuntary servitude were ended. Then came the fourteenth amendment, which was the effort, under the dynasty of President Johnson, to settle the question. That amendment was simply a statement to the States as follows: "If you do not allow these people to vote, you shall in a corresponding degree be deprived of a representation in Congress." What followed then? Why, that system of laws throughout the Southern States which I must somewhat elaborately bring before your honor. In the first place I refer to our own statutes, acts of 1865, page 18:

"That, upon complaint made on oath before a justice of the peace, mayor, or judge of the district court, or other proper officer that any person is a vagrant within the description aforesaid, it shall be the duty of such justice, judge, mayor, or other officer to issue his warrant to any sheriff, constable, policeman, or other peace officer, commanding him to arrest the party accused and bring him before such justice of the peace or other officer; and if the justice or other officer be satisfied by the confession of the offender, or by competent testimony, that he is a vagrant within the said description, he shall make a certificate of the same, which shall be filed with the clerk of the court of the parish, and in the city of New Orleans the certificate shall be filed in the office of one of the recorders; and the said justice, or other officer, shall require the party accused to enter into bond payable to the governor of Louisiana, or his successors in office, in such sums as said justice or other officer shall prescribe, with security, to be approved by said officer, for his good behavior and future industry for the period of one year; and

upon his failing or refusing to give such bonds and security, the justice or other officer shall issue his warrant to the sheriff or other officer directing him to detain and to hire out such vagrant for a period not exceeding twelve months, or to cause him to labor on the public works, roads, and levees, under such regulations as shall be made by the municipal authorities: *Provided*, That if the accused be a person who has abandoned his employer before his contract expired, the preference shall be given to such employer of hiring the accused: *And provided further*, That in the city of New Orleans the accused may be committed to the work-house for a time not exceeding six months, there to be kept at hard labor, or to be made to labor on the public works, roads, or levees. The proceeds of hire in the cases herein provided for to be paid into the parish treasury for the benefit of paupers: *And provided further*, That the person hiring such vagrant shall be compelled to furnish such clothing, food, and medical attention as they furnish their other laborers."

LOUISIANA.

December, 1865—"*An act to provide for and regulate labor contracts for agricultural pursuits.*"

Each laborer, after choosing his employer, "shall not be allowed to leave his place of employment until the fulfillment of his contract unless by consent of his employer, or on account of harsh treatment or breach of contract on the part of employer; and if they do so leave without cause or permission they shall forfeit all wages earned to the time of abandonment." Wages due shall be a lien upon the crops, and one-half shall be paid at periods agreed by the parties, "but it shall be lawful for the employer to retain the other merely until the completion of the contract. Employers failing to comply are to be fined double the amount due the laborer.

I now call the attention of the court to the following enactments in the States of Mississippi, Alabama, South Carolina, Florida, and Virginia:

MISSISSIPPI.

An act to regulate the relation of master and apprentice relative to freedmen, free negroes, and mulattoes, November 22, 1865.

Section 1 provides that it shall be the duty of all sheriffs, justices of the peace, and other civil officers of the several counties in the State to report to the probate courts of their respective counties semi-annually, at the January and July terms of said courts, all freedmen, free negroes, and mulattoes under the age of eighteen, within their respective counties, beats, or districts, who are orphans, or whose parent or parents have not the means or who refuse to provide for and support said minors; and thereupon it shall be the duty of said probate court to order the clerk of said court to apprentice said minors to some competent and suitable person on such terms as the court may direct, having a particular care to the interest of said minors: *Provided*, That the former owner of said minors shall have the preference when in the opinion of the court he or she shall be a suitable person for that purpose.

Section 4 provides that if any apprentice shall leave the employment of his or her master or mistress without his or her consent, said master or mistress may pursue and recapture said apprentice, and bring him

or her before any justice of the peace of the county, whose duty it shall be to remand said apprentice to the service of his or her master or mistress; and in the event of a refusal on the part of said apprentice so to return, then said justice shall commit said apprentice to the jail of said county, on failure to give bond, until the next term of the county court; and it shall be the duty of said court, at the first term thereafter, to investigate said case; and if the court shall be of opinion that said apprentice left the employment of his or her master or mistress without good cause, to order him or her to be punished as provided for the punishment of hired freedmen, as may be from time to time provided for by law for desertion, until he or she shall agree to return to his or her master or mistress: *Provided*, That the court may grant continuance as in other cases.

The vagrant act, November 24, 1865.

Section 1 defines who are vagrants.

Section 2 provides that all freedmen, free negroes, and mulattoes in this State over the age of eighteen years, found on the second Monday in January, 1866, or thereafter, with no lawful employment or business, or found unlawfully assembling themselves together, either in the day or night time, and all white persons so assembling with freedmen, free negroes, or mulattoes, or usually associating with freedmen, free negroes, or mulattoes, on terms of equality, or living in adultery or fornication with a freedwoman, free negro, or mulatto, shall be deemed vagrants, and, on conviction thereof, shall be fined in the sum not exceeding, in the case of a freedman, free negro, or mulatto, fifty dollars, and a white man two hundred dollars, and imprisoned at the discretion of the court, the free negro not exceeding ten days, and the white man not exceeding six months.

Section 3 gives all justices of the peace, mayors, and aldermen jurisdiction to try all questions of vagrancy; and it is made their duty to arrest parties violating any provisions of this act, investigate the charges, and, on conviction, punish, as provided. It is made the duty of all sheriffs, constables, town constables, city marshals, and all like officers to report to some officer having jurisdiction all violations of any of the provisions of this act, and it is made the duty of the county courts to inquire if any officer has neglected any of these duties, and if guilty to fine him not exceeding one hundred dollars, to be paid into the county treasury.

Section 6 provides that the same duties and liabilities existing among white persons of this State shall attach to freedmen, free negroes, and mulattoes, to support their indigent families and all colored paupers, and that, in order to secure a support for such indigent freedmen, free negroes, and mulattoes, it shall be lawful, and it is hereby made the duty, of the boards of county police of each county in this State to levy a poll or capitation tax on each and every freedman, free negro, or mulatto between the ages of eighteen and sixty years, not to exceed the sum of one dollar annually to each person so taxed, which tax, when collected, shall be paid into the county treasurers' hands, and constitute a fund to be called the freedmen's pauper fund, which shall be applied by the commissioners of the poor for the maintenance of the poor of the freedmen, free negroes, and mulattoes of this State under such regulations as may be established by the boards of the county police in the respective counties of this State.

Section 7 provides that if any freedman, free negro, or mulatto shall

fail or refuse to pay any tax levied according to the provisions of the sixth section of this act it shall be *prima facie* evidence of vagrancy, and it shall be the duty of the sheriff to arrest such freedman, free negro, or mulatto, or such persons refusing or neglecting to pay such tax, and proceed at once to hire, for the shortest time, such delinquent tax-payer to any one who will pay the said tax, with the accruing costs, giving preference to the employer, if there is one.

ALABAMA.

December.—Bill passed making it unlawful for any freedman, mulatto, or free person of color in this State to own fire-arms or carry about his person a pistol or other deadly weapon, under a penalty of a fine of one hundred dollars or imprisonment three months. Also making it unlawful for any person to sell, give, or lend fire-arms or ammunition of any description whatever to any freedman, free negro, or mulatto, under a penalty of not less than fifty dollars nor more than one hundred dollars, at the discretion of the jury.

SOUTH CAROLINA.

An act preliminary to the legislation induced by the emancipation of slaves, October 19, 1865.

Section 4 provides: That the statutes and regulations concerning slaves are now inapplicable to persons of color; and although such persons are not entitled to social or political equality with white persons, they shall have the right to acquire, own, and dispose of property, to make contracts, to enjoy the fruits of their labor, to sue and be sued, and to receive protection under the law in their persons and property.

An act to amend the criminal law, December 19, 1865.

Section 10 provides: That a person of color who is in the employment of a master engaged in husbandry, shall not have the right to sell any corn, rice, peas, wheat or other grain, any flour, cotton, fodder, hay, bacon, fresh meat of any kind, poultry of any kind, animal of any kind, or any other product of a farm, without having written evidence from such master, or some person authorized by him, or from the district judge or a magistrate, that he has the right to sell such product; and if any person shall directly or indirectly purchase any such product from such persons of color, without such written evidence, the purchaser and seller shall each be guilty of a misdemeanor.

Section 11 provides: That it shall be a misdemeanor for any person not authorized, to write or give to a person of color a writing which professes to show evidence of the right of that person of color to sell any product of a farm, which, by the section last preceding, he is forbidden to sell without written evidence; and any person convicted of this misdemeanor shall be liable to the same extent as the purchaser in the section last preceding is made liable; and it shall be a misdemeanor for a person of color to exhibit as evidence of his right to sell any product a writing which he knows to be false or counterfeited, or to have been written or given by any person not authorized.

Section 13 states: That persons of color constitute no part of the militia of the State, and no one of them shall, without permission in writing from the district judge or magistrate, be allowed to keep a fire-

arm, sword, or other military weapon, except that one of them who is the owner of a farm may keep a shot-gun or rifle, such as is ordinarily used in hunting; but not a pistol, musket, or other fire-arm or weapon appropriate for purposes of war. The district judges or a magistrate may give an order under which any weapons unlawfully kept may be seized and sold, the proceeds of the sale to go into the district-court fund. The possession of a weapon in violation of this act shall be a misdemeanor, which shall be tried before a district court or a magistrate, and in case of conviction shall be punished by a fine equal to twice the value of the weapon so unlawfully kept; and if that be not immediately paid, by corporal punishment.

Section 14 provides: That it shall not be lawful for a person of color to be the owner in whole or in part of any distillery where spirituous liquors of any kind are made, or of any establishment where spirituous liquors are sold by retail; nor for a person of color to be engaged in distilling any spirituous liquors, or in retailing the same in a shop or elsewhere. A person of color who shall do anything contrary to the prohibitions herein contained shall be guilty of a misdemeanor, and upon conviction may be punished by fine or corporal punishment and hard labor, as to the district judge or magistrate before whom he may be tried shall seem meet.

Section 22 provides: That no person of color shall migrate into and reside in this State, unless within twenty days after his arrival within the same he shall enter into a bond, with two freeholders as sureties, to be approved by the judge of the district court, or a magistrate, in a penalty of one thousand dollars, conditioned for his good behavior, and for his support if he should become unable to support himself.

An act to establish district courts, December 19, 1865.

Courts are established to have exclusive jurisdiction, subject to appeal, of all civil causes where one or both the parties are persons of color, and of all criminal cases, wherein the accused is a person of color, and also of all cases of misdemeanors affecting the person or property of a person of color, and of all cases of bastardy and of all cases of vagrancy not tried before a magistrate.

An indictment against a white person for the homicide of a person of color shall be tried in the superior court of law, and so shall other indictments in which a white person is accused of a capital felony affecting the person or property of a person of color.

Order of General Sickles disregarding the code, January 17, 1866.

January 17, 1866, Major-General Sickles issued this order:

[General Orders No. 1.]

HEADQUARTERS DEPARTMENT OF SOUTH CAROLINA,
January 17, 1866.

I. To the end that civil rights and immunities may be enjoyed; that kindly relations among the inhabitants of the State may be established; that the rights and duties of the employer and the free laborer respectively may be defined; that the soil may be cultivated and the system of free labor undertaken; that the owners of estates may be secure in the possession of their lands and tenements; that persons able and willing to work may have employment; that idleness and vagrancy may be discountenanced and encouragement given to industry and thrift; and that humane provision may be made for the aged, infirm, and destitute, the following regulations are established for the government of all concerned in this department:

II. All laws should be applicable alike to all the inhabitants. No person shall be held incompetent to sue, make complaint, or to testify because of color or caste.

III. All the employments of husbandry, or the useful arts, and all lawful trades or callings may be followed by all persons, irrespective of color or caste; nor shall any freedman be obliged to pay any tax or any fee for a license, nor be amenable to any municipal or parish ordinance, not imposed upon all other persons.

IV. The lawful industry of all persons who live under the protection of the United States, and owe obedience to its laws, being useful to the individual and essential to the welfare of society, no person will be restrained from seeking employment when not bound by voluntary agreement, nor hindered from traveling from place to place on lawful business. All combinations or agreements which are intended to hinder, or may so operate as to hinder, in any way the employment of labor, or compel labor to be involuntarily performed in certain places or for certain persons, as well as all combinations or agreements to prevent the sale or hire of lands or tenements, are declared to be misdemeanors, and any person or persons convicted thereof shall be punished by fine not exceeding five hundred dollars or by imprisonment not to exceed six months, or by both such fine and imprisonment.

* * * * * * *

XIII. The vagrant laws of the State of South Carolina applicable to white persons will be recognized as the only vagrant laws applicable to the freedmen; nevertheless such laws shall not be considered applicable to persons who are without employment, if they shall prove that they have been unable to obtain employment after dilligent efforts to do so.

* * * * * * *

XVI. The constitutional rights of all loyal and well-disposed inhabitants to bear arms will not be infringed; nevertheless this shall not be construed to sanction the unlawful practice of carrying concealed weapons, nor to authorize any person to enter with arms on the premises of another against his consent. No one shall bear arms who has borne arms against the United States, unless he shall have taken the amnesty oath prescribed in the proclamation of the President of the United States dated May 29, 1865, or the oath of allegiance prescribed in the proclamation of the President dated December 8, 1863, within the time prescribed therein. And no disorderly person, vagrant, or disturber of the public peace shall be allowed to bear arms.

XVII. To secure the same equal justice and personal liberty to the freedmen as to other inhabitants, no penalties or punishments different from those to which all persons are amenable shall be imposed on freed people; and all crimes and offenses which are prohibited under existing laws shall be understood as prohibited in the case of freedmen; and, if committed by a freedman, shall, upon conviction, be punished in the same manner as if committed by a white man.

XVIII. Corporal punishment shall not be inflicted upon any person other than a minor, and then only by the parent, guardian, teacher, or one to whom said minor is lawfully bound by indenture of apprenticeship.

* * * * * * *

XX. All injuries to the person or property committed by or upon freed persons shall be punished in the manner provided by the laws of South Carolina for like injuries to the persons or property of citizens thereof. If no provisions be made by the laws of the State, then the punishment for such offenses shall be according to the course of common law; and in the case of any injury to the person or property not prohibited by the common law, or for which the punishment shall not be appropriate, such sentence shall be imposed as in the discretion of the court before which the trial is had shall be deemed proper, subject to the approval of the general commanding.

By command of D. E. Sickles, major-general.
Official:

W. L. M. BURGER,
Assistant Adjutant-General.

FLORIDA.

An act to punish vagrants and vagabonds, January 12, 1866.

Section 1 defines as a vagrant "every able-bodied person who has no visible means of living and shall not be employed at some labor to support himself or herself, or shall be leading an idle, immoral, or profligate course of life," and may be arrested by any justice of the peace or judge of the county criminal court, and be bound "in sufficient surety" for good behavior and future industry for one year. Upon refusing or failing to give such security, he or she may be committed for trial, and, if convicted, sentenced to labor and imprisonment not exceeding twelve

months, by whipping not exceeding thirty-nine stripes, or being put in the pillory. If sentenced to labor, the "sheriff or other officer of said court shall hire out such person for the term to which he or she shall be sentenced, not exceeding twelve months, aforesaid, and the proceeds of such hiring shall be paid into the county treasury." All vagrants going armed may be disarmed by the sheriff, constable, or police-officer.

An act in relation to contracts of persons of color, January 12, 1866.

Section 2 provides: That, whereas it is essential to the welfare and prosperity of the entire population of the State that the agricultural interest be sustained and placed upon a permanent basis, it is provided that when any person of color shall enter into a contract, as aforesaid, to serve as a laborer for one year, or any other specified term, on any farm or plantation in this State, if he shall refuse or neglect to perform the stipulations of his contract by willful disobedience of orders, wanton impudence, or disrespect to his employer, or his authorized agent, failure or refusal to perform the work assigned to him, idleness, or abandonment of the premises or the employment of the party with whom the contract was made, he or she shall be liable, upon the complaint of his employer or his agent, made under oath before any justice of the peace of the county, to be arrested and tried before the criminal court of the county, and upon conviction shall be subject to all the pains and penalties prescribed for the punishment of vagrancy: *Provided*, That it shall be optional with the employer to require that such laborer be remanded to his service, instead of being subjected to the punishment aforesaid.

An act prescribing additional penalties for the commission of offenses against the State, January 15, 1866.

Section 12 provides: That it shall not be lawful for any negro, mulatto, or other person of color to own, use, or keep in his possession, or under his control, any bowie-knife, dirk, sword, fire-arms, or ammunition of any kind, unless he first obtain a license to do so from the judge of probate of the county in which he may be a resident for the time being; and the said judge of probate is hereby authorized to issue license, upon the recommendation of two respectable citizens of the county, certifying to the peaceful and orderly character of the applicant; and any negro, mulatto, or other person of color so offending shall be deemed to be guilty of a misdemeanor, and upon conviction shall forfeit to the use of the informer all such fire-arms and ammunition, and, in addition thereto, shall be sentenced to stand in the pillory for one hour or to be whipped not exceeding thirty-nine stripes, or both, at the discretion of the jury.

Section 14 provides: That if any negro, mulatto, or other person of color shall intrude himself into any religious or other public assembly of white persons, or into any railroad-car or other public vehicle set apart for the exclusive accommodation of white people, he shall be deemed to be guilty of a misdemeanor, and upon conviction shall be sentenced to stand in the pillory for one hour or be whipped not exceeding thirty-nine stripes, or both, at the discretion of the jury.

VIRGINIA.

The Virginia vagrant act.

General Terry orders its non-enforcement.

[General Orders No. 4.]

HEADQUARTERS DEPARTMENT OF VIRGINIA,
Richmond, January 24, 1866.

By a statute passed at the present session of the legislature of Virginia, entitled "A bill providing for the punishment of vagrants," it is enacted, among other things, that any justice of the peace, upon the complaint of any one of certain officers therein named, may issue his warrant for the apprehension of any person alleged to be a vagrant, and cause such person to be apprehended and brought before him; and that, if upon due examination said justice of the peace shall find that such person is a vagrant within the definition of vagrancy contained in said statute, he shall issue his warrant directing such person to be employed for a term not exceeding three months, and by any constable of the county wherein the proceedings are had be hired out for the best wages which can be procured, his wages to be applied to the support of himself and his family. The said statute further provides that in case any vagrant so hired shall, during the term of his service, run away from his employer without sufficient cause, he shall be apprehended on the warrant of a justice of the peace, and returned to the custody of his employer, who shall then have, free from any other hire, the services of such vagrant for one month in addition to the original term of hiring, and that the employer shall then have power, if authorized by a justice of the peace, to work such vagrant with ball and chain. The said statute specifies the persons who shall be considered vagrants and liable to the penalties imposed by it. Among those declared to be vagrant are all persons who, not having the wherewith to support their families, live idly and without employment, and refuse to work for the usual and common wages given to other laborers in the like work in the place where they are.

In many counties of this State meetings of employers have been held, and unjust and wrongful combinations have been entered into for the purpose of depressing the wages of the freedmen below the real value of their labor, far below the prices formerly paid to masters for labor performed by their slaves. By reason of these combinations wages utterly inadequate to the support of themselves and families have, in many places, become the usual and common wages of the freedmen. The effect of the statute in question will be, therefore, to compel the freedmen, under penalty of punishment as criminals, to accept and labor for the wages established by these combinations of employers. It places them wholly in the power of their employers, and it is easy to foresee that, even where no such combination now exists, the temptation to form them offered by the statute will be too strong to be resisted, and that such inadequate wages will become the common and usual wages throughout the State. The ultimate effect of the statute will be to reduce the freedmen to a condition of servitude worse than that from which they have been emancipated—a condition which will be slavery in all but its name.

It is therefore ordered that no magistrate, civil officer, or other person shall in any way or manner apply, or attempt to apply, the provisions of said statute to any colored person in this department.

By command of A. H. Terry, major-general.

ED. W. SMITH,
Assistant Adjutant-General.

Now, if the court pleases, that is a true delineation of the state of things as it existed in the Southern States in the year 1866 and subsequently, as taken from their own statutes; and that picture presented itself before Congress. The thirteenth amendment had prohibited slavery and involuntary servitude; the fourteenth amendment had, so to speak, made a conditional offer to induce the States to grant to all the right of suffrage. Yet we see, in the language of General Terry's order, the shackles still upon the freedman; he was still treated as a criminal; was put up at auction and hired out; he was subjected to a different penal code; tried by a different court from a white man—in a word, all was done to impede his progress which could possibly be done.

Under these laws, which your honor will perceive had been adopted with a considerable degree of uniformity throughout the reconstructed States, showing a purpose at once common and deep-seated, the freedman would have had little protection to even property or life, no motive for self-elevation, little opportunity for education. He must have remained ignorant, poor, and forever removed from the career which, of right, as well as in the interests of the State, should be open to all the

children of men upon whom God's sunlight falls. It is in some respects a darker picture than that presented by slavery, for it shows the former masters, in spite of the terrific rebukes of Providence, which had come in the shape of the plagues of the war, still determined to humiliate and degrade the freedman, still unwilling that he should enjoy the commonest rights of the citizen. It was Pharoah still refusing to let the children of bondage go free. Was the remedy, then, proposed by the fifteenth amendment too severe or too far-reaching? Would anything less have applied?

Four millions of people were thus helpless before the law; and they were citizens. Could such a state of things continue to exist in a republic? What would the world say of a country or body-politic which would allow such oppression in its midst? What was to be the solution of this difficult question? What could be done in order to provide an effectual cure for this evil? Philanthropy and statesmanship alike demanded a radical and universal remedy—a remedy as potent and plastic as the evil was strongly entrenched and extensive. The only salutary and sure cure was to be found in the fifteenth amendment, which guaranteed to all citizens, without distinction of race, color, or previous condition, the complete right to vote, and in the act of Congress passed to enforce the same, which placed the protection of that right in the circuit court; gave the circuit court jurisdiction of all cases arising in law or equity under the act which sought to protect all citizens in their right to vote. Was Congress so short-sighted—can we so impugn their wisdom as to suppose that this significant change in the fundamental law of the land, and this extended and ramified statute and the amendment thereto, which were equally searching, that the practical protection to the freedmen was simply that a defeated candidate might bring his *quo warranto?* If this view of the other side be correct, what better illustration of the labor of the mountain and the bringing forth of the mouse? No. That statute, based upon that broad provision of the Constitution, bears with it a force and power which includes every attempt to deprive the citizen of his vote on account of race by a suit in damages if the attempt has been accomplished, and by a prohibitory process if the attempt is unexecuted; and that right to vote is made by the statute to extend from the first movement in the way of registration down to the final promulgation of the last officer who should canvass or compile the returns. This, and nothing else, would have been a vindication of the colored man in the Southern States in his right to vote. This was precisely the protection which was secured to him. The language and scope of the act, the purpose, as declared in its title and in every line, the broad language in which the jurisdiction is conferred, show that it was designed to have, and does have, an extent of application commensurate with the necessity which I have shown caused its enactment.

This case itself shows the occasion, the object, and the argument for a statute so authorized, so framed, and so to be construed. Without the jurisdiction vested in this court, 20,000 freedmen would be deprived, on account of race, of the right to vote, and the verdict of the people, as expressed at the polls, would practically and I may say overwhelmingly, be reversed. It is this construction, or there is no available remedy for the deliberate and gigantic system of frauds which, as alleged in the bill, covered like a sea this whole State.

But, if it were possible, let us for a moment regard this as a mistaken view; that all Congress intended was to give a party the right to bring his action in the nature of a *quo warranto* to contest the title to office; and that the fifteenth section of the amendment, when it speaks of every

case in law and equity, speaks only of such cases in equity as would in strictness be in aid of this one suit at law. Upon that narrow ground, still the plaintiff stands secure. My friend Mr. Eustis, in his exceedingly able and subtle argument, seemed to think that the objection that all parties to this suit were citizens of Louisiana was fatal. But after examining the doctrine as laid down by the United States Supreme Court, I think we shall find that where the circuit court has jurisdiction of the main or principal action, the jurisdiction in the ancillary suit follows, without reference to the citizenship of the parties. I refer to the case of "Freeman *vs.* Howe," 24 Howard, 451–460. The facts in this case were as follows: In a suit pending in the circuit court of the United States, district of Massachusetts, property was attached on mesne process and taken into the possession of the United States marshal. The property thus attached was claimed by a third person, who, together with the marshal, was a citizen of Massachusetts. Under the apprehenson that he had no remedy in the circuit court on account of citizenship, Howe, the third party, instituted a replevin suit in the State court. The case went through the supreme court of Massachusetts, and by writ of error was brought to the Supreme Court of the United States. The point was pressed upon the Court, by the defendant in error that, unless he had this remedy in the State court, he was remediless; but the Court, at page 460, says:

> Another misapprehension under which the counsel for the defendent in error labors, and in which the court below fell, was in respect to the appropriate remedy of the plaintiffs in the replevin suit for the grievance complained of. It was supposed that they were utterly remediless in the Federal courts, inasmuch as both parties were citizens of Massachusetts. But those familiar with the practice of the Federal courts have found no difficulty in applying a remedy, and one much more effectual than the replevin, and more consistent with the order and harmony of judicial proceedings, as may be seen by reference to the following cases: 23 How., 117, Pennock *et al. vs.* Coe; Robert Sue *vs.* The Tide-Water Canal Company, decided this term; 12 Peters, 164; 8 ib., 1; 5 Cranch, 288.
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> The principle is, that a bill filed on the equity side of the court, to restrain or regulate judgments or suits at law in the same court, and thereby prevent injustice or an inequitable advantage under mesne or final process, is not an original suit, but ancillary and dependent, supplementary merely to the original suit out of which it had arisen, and is maintained without reference to the citizenship or residence of the parties.
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> The case in the "8 Peters, 1," which was among the first that came before the court, deserves, perhaps, a word of explanation. It would seem, from a remark in the opinion, that the power of the court upon the bill was limited to a case between the parties to the original suit. This was probably not intended, as any party may file the bill whose interests are effected by the suit at law.

I say, then, if we were pushed to maintain this suit simply upon the ground that it is a suit in equity ancillary to a suit at law, and without which the suit at law would be nugatory, that upon the doctrine of the case just stated the equity jurisdiction is sufficient upon the ground that the court, having jurisdiction of the suit at law, and having certainly some equity jurisdiction given by the fifteenth section, must have authority to hear a suit in equity, whose sole object is to lay the foundation for the suit at law.

But I put the jurisdiction of the court upon the broad ground that the purpose of the statute and the language of the statute would not be answered unless the court had jurisdiction of every case in equity, arising from a threatened or an accomplished infraction of the rights declared and guaranteed by these statutes.

Before leaving this branch of the case, I desire to call the attention of the court to an analogous class of cases. This court has jurisdiction of all cases involving patents. The subject-matter gives the jurisdiction. The statute which creates the jurisdiction in the case of patents

is similar to that which gives jurisdiction in cases of interference with the right of citizens to vote. The language of both statutes is, in all cases of law or equity arising out of the subject-matter. Now, if my brother Hunt institutes a suit against me in this court, and alleges that I am infringing upon his rights under a patent which he holds by assignment from General Campbell, and the issues in the cases are made up, although one of the individual issues may be whether the transfer from General Campbell to Mr. Hunt was valid, still that incidental question is carried by the general jurisdiction conferred. In fact, unless the court had jurisdiction of the incidental questions, either of patents or voting, general jurisdiction would be of little avail.

And in the case I have put, although Mr. Hunt and myself are both citizens of this State, still, if, to decide the case it became necessary for the court to pass upon the validity of the assignment along with other issues, it is bound to do so. So, in this case, the court having jurisdiction by virtue of the subject-matter, if the incidental question has arisen who are the legal board of canvassers, that question must be met and disposed of by the court. It is an incidental question fairly incident to the great matters included within the jurisdiction of the court, and therefore covered by it. But I deny that it is a collateral question, because, as between the plaintiff in this bill, who alleges that these parties are about to violate his right, and these parties, it is a direct question. True, there might be a suit instituted between this board of canvassers and another, and the issue might there be made as to which was the legal board. But where a party is charged with assuming the functions of an office to which by law he has no title, and the object of the suit is to enjoin him from exercising the functions of that office in a manner prejudicial or fatal to the rights of the plaintiff, and the issue is joined on those facts, I deny that that issue is collateral. In a suit between Mr. Kellogg and another person to which this board, alleged to be illegal, were not parties, the issue as to their legality might be liable to the objection that it was set up collaterally, but not here, where they are parties to the suit.

Before I leave this branch of the subject I desire to call your honor's attention to the debates in the United States Senate upon the passage of this act. (Counsel here read from the debates of the United States Senate in the Congressional Globe of 1870.)

Your honor will perceive that not alone the republican Senators, but the democratic, seemed to concede, in the discussion, that this act not only applied to all State officers excepting members of the legislature and Congress, but that even the twenty-third section authorized any procedure which would supervise, and indeed correct, the canvass of votes. Your honor will perceive from what I read, that upon the adoption of the twenty-third section in the Senate very much of the discussion turned upon whether a *mandamus* could of itself be used to direct the canvassers to count votes which had not been allowed to be cast, and that the word "mandamus" was stricken out and the "appropriate procedure" substituted, because it appeared in the argument that the mandamus could not be used to interfere with the discretion of the canvassers. Indeed, that discussion shows that the Senators on both sides meant to adopt in the twenty-third section alone a provision which would authorize the circuit court by an "appropriate procedure" to cause to be counted any votes which had been rejected on account of race, color, or previous condition, and that appropriate procedure must certainly include the restraining of those who not only are about to reject legal votes on the ground specified, but who are themselves an illegal body, and whose action, if unin-

terrupted, will simply cloud the title of the complainant in the bill to the office to which he alleges he has been elected.

TUESDAY, *December* 3.

Mr. BILLINGS, resuming; May it please the court, when the hour of adjournment came yesterday I was speaking upon the question of jurisdiction. Your honor will remember that I had read parts of the statutes, and the amendments thereto, which declared what rights should exist to all voters and to candidates; that I had read the fifteenth section of the amendatory act, which is all inclusive, embracing all cases of law or equity that could arise under that or the act amended; I had shown by authority that where a right is given by a statute the party aggrieved may have his appropriate remedy in case of infraction I had shown that the preceding and contemporaneous events authorized and fortified the conclusion, that the general jurisdiction was given to prevent and redress wrongs which might be done to voters and candidates in violation of these acts; I had shown that, even viewing this suit as sustainable only by reason of its being ancillary to the suit at law, the court clearly had jurisdiction; and I called your honor's attention to the discussions in the Senate, where the views of leading Senators are clearly consonant with this theory; I had shown that unless this view was maintainable, this elaborate statute was well-nigh futile. This provision of the Constitution under discussion, and the statute and the amendment, undoubtedly arose from the necessity of protecting the colored people of the Southern States that had been recently emancipated and enfranchised. They were to a great extent helpless; they were ignorant; but they had, from an overwhelming necessity of state, to be made citizens, and had to be clothed with the right of suffrage. The danger to republican government was too imminent to allow this vast number of people to be in our midst and to remain disfranchised. Their former masters had shown a disposition, and possessed the power, to reduce them to a state bordering upon slavery, and having the denial of the rights of freemen if it did not carry with it all the horrors of slavery; they had shown a disposition not to relieve the oppressed condition of the former slave, or to elevate him, but had gone upon the old idea that he represented only so much labor. It was a last effort of slavery to retain its virtual power, though under the name and system of freedom. Congress undoubtedly felt, as the civilized world must feel, that if the freedman was ignorant it was not his fault, for he had been compelled to live under a system of laws, as any one will discover by reading the acts of the several slave States, where it was a felony or high offense, severely punishable, to teach a slave to read; and I may say here, that that very statute prevailing throughout the South, proves that there was at least a desire on the part of the slave to learn to read and write, else why this stringent prohibition? Be that as it may, he was ignorant and helpless; but he had to be protected, and against his former master, and that protection was, by Congress, and I think most wisely, thought to be most safely cared for in this complete guaranty and protection of his right to vote, which the Federal Government assumed and delegated to its circuit courts.

There is an immense power slumbering in that fifteenth amendment. Its origin was in the necessities of the colored race, but its application and scope are far beyond them. It includes the foreigner as distinguished from the class of native-born; it includes the foreigner born in a particular country, as distinguished from foreigners born in other

countries; it includes the native-born as distinguished from the aliens; it includes any race or color, or previous condition, which, by virtue of that accident, may hereafter be oppressed and may hereafter need protection in its right of suffrage. So that it is not simply the freedman of African descent, who may avail himself of its provisions, but the unfortunate of all classes or races against whom exists or shall exist political oppression, proscription, or prejudice. When, therefore, we come to see it in all its relations, we see how magnificent a provision it is, not alone in its humanity—or, I might say, its Christianity—but in the breadth of its application and utility; its summary and grand practical application of declaratory principles, the seeds of which commenced with the utterances of our Saviour, and which in general enunciations our fathers themselves uttered in the Declaration of Independence. But it is here practically set out and made a fundamental and structural part of the Government, and he who reads hereafter the history of this great civil war and of its results, will linger longest and felicitate mankind most upon this great bulwark here set up for the protection of all classes and all races.

I submit that this case is properly before the circuit court, provided the bill contains such allegations as to bring the case within the purview of the statute as thus expounded. Let us then for a moment consider what is the object and what are the allegations of this bill. I cannot, as I approach this bill, refrain from again stating that I feel an increasing admiration for the skill which my friend Mr. Beckwith, its author, has here shown as a pleader. It seems to me that, with propriety, it might take its place in our text books as a model of equity pleading, and that, too, although the subject embraced in it is so new, and this, so far as I know, is the first civil case that has arisen under this statute. The object of the bill is this: It has two aspects. It says, in the first place, that the complainant in the bill was the candidate for governor, and submitted himself to the suffrages of the people of this State; that he has been and is about to be deprived of the votes in two ways: first, that voters were prevented from registration and subsequent voting, on account of race, color, and previous condition; that these votes would have been cast for him, and, therefore, in law should be regarded by the canvassers as having been cast for him. The second aspect is, that the votes of a certain class of citizens, although allowed to be cast, are about to be excluded from the effective count or canvass on account of their race, color, or previous condition of the voters; and that these votes so about to be excluded were cast for him; that unless there is an interference by this court of equity, those votes which were prevented from being cast, as well as those which had been cast, will be prevented from being canvassed. Therefore, he asks that your honor will issue an injunction and restrain these people, who made the combination charged in the bill, from defeating the complainant and from clouding his title. Now, I submit that, if I have been correct in the main argument which I have addressed to the court, this resumé of the substance of the bill brings it within the jurisdiction of the court. I say, further, that the allegation of the bill that it seeks to preserve and perpetuate these returns, so that they may be used in a direct action at law, gave a substantive and independent ground of jurisdiction. The case made by the bill is one where ten thousand freedmen have been excluded and ten thousand more freedmen are about to be excluded from voting. It is twenty thousand cases in one. Every excluded vote, every vote about to be excluded, gives your honor jurisdiction. There is a case which concentrates in itself under the allegations the cases

of twenty thousand people—citizens who have been excluded and are about to be excluded on the ground of race and color; and I say in this connection, that five thousand of these voters are before your honor by their affidavits, and they swear that they had been excluded on account of race and color. Can there be a doubt, then, that this court has jurisdiction?

I submit a clearer case never existed. I think it so glaring and high-handed an attempt on the part of the chief executive of the State, under the allegations in the bill, and the multiplied corroborative affidavits, that there should be the swiftest action by this court. I think that, sitting as a chancellor, your honor should order not only that these parties be restrained from compassing and accomplishing this outrage upon the rights of twenty thousand citizens of this State, but that you should *ex propria motu* order that all the returns should be placed in the hands of the register of this court, that they may be there reproduced, so that fraud and cunning and despotic and unprincipled power, acting in ways never so devious and manifold, shall be powerless to destroy or mutilate or change them.

So much, then, for the question of jurisdiction.

But the learned gentlemen on the other side say to us that this is all a question about canvassers, which is the legal board, and that that has fallen out practically of the case by reason of the approval by the governor of the act approved November 20, 1872; that by that act this board of canvassers, both boards, all boards, have ceased to exist. I will first remark, in reply to this position, that that state of things, if true, would furnish but a partial answer to the case made by the bill. The injunction would still stand, because the question of jurisdiction goes back to the state of things which existed at the time of the commencement of the suit. But in the second place it has surprised me that this answer should have been pressed with so much force and earnestness, for this reason, if the board created by Governor Warmoth, the "Wharton Board," has ceased to exist, what harm can come from its being enjoined? How can it be said in the same breath by my learned friends on the other side, that this board has no longer any powers as a board of canvassers, in fact, can do nothing, and at the same time that by stopping these canvassers you are stopping the operation of a whole State government? If their theory as submitted by Mr. Semmes be true, then this injunction would be as harmless as if Judge Howe or myself were enjoined from making a canvass of these votes. The earnestness with which Mr. Semmes urged that the whole State government was to be made to stand still by this injunction leads me to suspect that after all he very much distrusted his argument as to the effect of the approval of the act of the 20th November.

I think we shall find upon authority, as well as reason, that the legal board of canvassers, be they whom they may be, must continue to discharge their duty until their successors in law are appointed. I desire your honor's attention with some particularity to exactly the features presented by these two boards. The old board is established by the act of 1870, to be found at page 155 of the acts of 1870.

Be it further enacted, That the governor, the lieutenant-governor, the secretary of State, and John Lynch and T. C. Anderson, or a majority of them, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning-officers. The returning-officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any other district court:

"——— do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning-officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election. So help me God."

Within the day after the closing of the election said returning-officers shall meet in New Orleans to canvass and compile the statements of votes made by the supervisors of registration, and make returns of the election to the secretary of state.

They shall continue in session until such returns have been completed. The governor shall at such meeting open, in the presence of the said returning-officers, the statements of the supervisors of registration, and the said returning-officers shall from said statements canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers until set aside, after a contest according to law, of the right of any person therein to hold and exercise the office to which he shall by such return be declared elected.

The governor shall within thirty days thereafter issue commissions to all officers declared elected who are required by law to be commissioned.

Then there is a provision here that if any of the returning-officers (section 57) nominated in this act be a candidate for office at any election, he shall be disqualified to act as a returning-officer in that election.

Be it further enacted, That should any of the returning-officers named in this act be a candidate for any office at any election, he shall be disqualified to act as returning-officer for that election, and a majority of the remaining returning-officers shall summon some respectable citizen to act as returning-officer in place of the one so disqualified.

Now I desire to call your attention to the fact that these men are officers; that the legislature have, by their own terms, defined them to be officers; that is, five persons shall be returning-officers of all elections in the State, and they are all designated distinctly to hold the office. What does the new act say with reference to the same duty? Section 2 of the act of November 20, 1872, reads:

SEC. 2. *Be it further enacted, &c.*, That five persons, to be elected by the Senate, from all political parties, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning-officers. The returning-officers shall, after each election, before entering upon their duties, take and subscribe to the following oath, before a judge of the supreme or any district court.

"I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning-officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election. So help me God."

Within ten days after the closing of the election said returning-officers shall meet in New Orleans to canvass and compile the statement of votes made by the commissioners of election and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall at such meeting open, in the presence of the said returning-officers, the statements of the commissioners of election, and the said returning-officers shall, from said statements, canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The return of the election thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall, by such return, be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

Now, if the court pleases, by a reference to the act approved Novem-

ber 20, 1872, section 2, your honor will perceive that the five persons who were to constitute a board of returning-officers have precisely the same duties, take identically the same oath, and hold in all respects the same office as the board of returning-officers under the act of 1870. By a reference to section 44 of the act last referred to, your honor will perceive that the board of returning-officers is to make their return to the secretary of state, who shall make a list of the officers elected to the senate and house of representatives, and upon that list the organization shall be made of the two houses; the language of the statute being that the persons upon the lists made by the clerk and secretary, respectively, in accordance with the foregoing provision, and none other, shall be competent to organize the house of representatives and the senate; so that your honor will see that if the view pressed by the other side were to prevail, to wit, that the approval of the act on the 20th of November, 1872, operated as a repeal of this act of 1870, and abolished the board of returning-officers, and caused their functions entirely to cease, then this state of things would follow—we must have a board of returning-officers before we can have a senate legally organized, and we must have a senate before we can have a returning-board, for the returning-board make up the list upon which the senate is organized, and the senate elect the board of returning-officers. Is not this puzzle, call it Chinese or any other, the fair result of the reasoning on the other side? It is a dead lock; there is no extricating the State from the difficulty in which they would plunge us. Nor would it do for the governor to appoint, because the statute authorizes him to appoint, only when the legislature have designated no way in which the offices are to be filled, and here they have designated the way and thereby excluded all others. I put this question: Suppose that on the first Monday of November, at twelve o'clock meridian, Governor Warmoth, having held this act, against the wishes of all good people of the State, in his possession for upward of eight months, and while the election was going on, having commenced at six in the morning, should have approved this act, what would be the effect? Can it be said that the election must be suspended? Must it not follow that the various officers, those at the polls and those who canvass the returns, must continue their duties until they are relieved by their successors?

Now, I submit that article 122 of the constitution of the State of Louisiana was designed and calculated to prevent just such a dilemma. That article is as follows: "All officers shall continue to discharge the duties of their offices until their successors shall have been inducted into office, except in cases of impeachment or suspension."

Now, then, if we concede, for the sake of argument, that the governor could approve this bill on the 20th day of November, 1872, and that thereby it became a living law, and that thereby the old law was repealed, the board of returning-officers must still continue, under the constitution of this State as above cited, to perform the functions of their office until the new board selected in the method pointed out by the new law is inducted into office. Any one who reads with care these two acts, that of 1870 and that of November 20, 1872, will perceive that both, in the eye of the makers, were designed to operate upon an election as an entirety; upon the preparatory machinery, the actual casting of the vote, and the manner in which the summary or result of the ballots was to be ascertained. All this was sought to be effected at once; and were it necessary the point could well be taken that it was not in the power of the governor, by approving this act, provided his approval would have the effect claimed by the other side, to create the confusion

of rights which would follow, by giving to his approval the effect claimed by the other side. The board of canvassers were half through with their work when the approval was effected. Shall the new board come in and finish the remaining half? Is it not clear that the ordinary dangers which attend the canvass of votes, and interfere with the fairness of results, would be a thousandfold aggravated if this division was allowed; for a division of responsibility would be absolute irresponsibility.

Article 110 of the constitution provides that "no *ex post facto* or retroactive law shall be passed." Of course, ex post facto laws comprise all criminal statutes, and retroactive laws are meant to include the statutes upon all civil matters, and is thus clearly put in our constitution. It was only recently that this retroactive provision was put in the various constitutions, and the purpose of it is clear. If your honor will refer for one moment to the case of the Charles River Bridge against the Warren Bridge, 11 Peters, page 420, it will be perceived that the court speaks with regret that a provision like the one under consideration was not to be found in the Constitution of the United States. Fortunately, our constitution has that provision, and that of itself rendered it impossible for the governor by any act of his, the approval of a law or other act, to divest any vested right. The law could not retroact; it could only apply to an election where it could apply to it in toto, that is to say, where it could affect the whole of it, where a senate legally convened should have selected, by the method pointed out by the new law, the board of canvassers. In any other view we should have dire confusion of rights in reference to the persons voted for, and a hiatus in the government. Indeed, I submit that the logic and arguments of our friends on the other side, if pushed to their fair logical conclusion, would lead to this, that the entire election was a nullity, because it is clear that the law-makers never designed to change the method of procedure at the point at which the governor sought by his ill-timed, if not ill-designed, approval to effect the change. Do the other side wish this result? or, rather, do they believe that their chances are better to have this election held as void? If not, then I submit there can be no division. The canvassers who were charged with the duty of making this canvass must complete the work. I submit, then, that any other mode of reasoning than the simple one which I have just argued would involve us, as a State, in inextricable embarrassments, and that article 122 furnishes us with the only solution of the whole matter; and we may state the conclusion in this way, conceding all that the other side claim, that the old board of canvassers must continue to act as canvassers until the new one is inducted into office.

I am reminded by my friend Colonel Field that a gentleman of rare abilities and great legal lore, Mr. Roselius, has given to the mayor an opinion, which has been made public, to this effect: that after a legislature has ceased to exist and another legislature has been chosen, that it is out of the power of the executive to approve an act passed by the defunct legislature; because, he says, with great force, he can do one of two things—he can approve an act, or send it back with his reasons; but he cannot send it back with his reasons, because the legislature that originated it has ceased to exist. Therefore, he cannot approve it. This view is not necessary to the complainant's case, for I think I have shown that the point made by the solicitors on the other side is not well taken; but this view of Mr. Roselius furnishes another and independent answer to their objection. Your honor will judge of the reason that this opinion bears upon its face; and I know that great weight

will be attached by the court to any deliberate opinion of Mr. Christian Roselius. That great name is entitled to a weight which few names are entitled to at the bar of America. His life has been spent here from the age of eighteen; he has risen by the force of his genius from obscurity to his present great eminence, and he stands to-day, by consent of the bar of America, in the maturity of his study and his learning, the very first civil-law lawyer in the country, and *facile princeps* in a knowledge of the civil law, so far as it is to be found in the statutes and jurisprudence of Louisiana.

But take any view of the objection of the defendants, and the conclusion stands that the old board of canvassers to-day, as well as when the bill was filed, is entitled to go on and complete its work, and this, because an express provision of the constitution commands it, and because it is the sole method by which chaos can be prevented in our whole State government; and that brings me to consider very briefly the facts, so far as they go to the constitution of these two rival boards.

Your honor has perceived that this board has enormous powers, and, whether it be under the old law or the new, that its powers are identical; that their duties are not simply to compile and aggregate the vote, but that they have an enormous discretion outside of that, which can nowhere be reviewed. If three citizens from any parish or voting-precinct say in substance by affidavit that there was not a free election, it is made the duty of this board to investigate whether there was or not; and if they decide that there was not, then they are to reject and consider as not having been cast all the votes at that precinct. That is a power which is greater than in any State else in this country, with one exception, that of Arkansas. Each board of canvassers, a majority of them, have the power of rejecting all votes cast at polls where, in their opinion, there was not a fair and free election; so that, under our statute, I might, as a candidate, have received a thousand votes and my competitor fifty, and it might be returned that my thousand votes were cast at a poll where there was not a free election, so that my rival, with fifty votes, would be declared, and legally, too, elected. So that it was not on the part of Governor Warmoth a struggle for a board of canvassers which could merely count and add, but a board that had the power to change the whole aspect of the canvass, especially where an election was reeking all over with fraud.

Now, let us consider the facts as to the selection and organization of the rival boards. There is but one fact which is disputed, and that is as to whether Herron and Lynch voted against Hatch and Da Ponte, and for Longstreet and Hawkins.

Your honor will recollect that under the statute the board originally consisted of the governor, lieutenant-governor, Anderson, Herron, the secretary of state, and Lynch. The lieutenant-governor and Anderson had fallen out of the board, being disqualified on account of having been candidates.

The board then consisted of the governor, Herron, and Lynch, with two vacancies; and the question is, whether Lynch and Herron voted for Longstreet and Hawkins, and against the men brought forward by the governor. Various affidavits have been read, and I doubt not the gentlemen who made them believed what they said therein; but if we look at the acts of Mr. Lynch and of General Herron, before and after the organization, I think that we shall find that the undisputed facts show a settled purpose on their part not to act in conjunction with the governor. Indeed, Mr. Lynch called up this matter of filling the vacancies, and when force was applied and the attempt made to eject Herron

and substitute Wharton, he gathered up his papers and withdrew from the room. Can there be a doubt that Mr. Lynch and General Herron voted against Da Ponte and Hatch, and voted for Longstreet and Hawkins? To my mind, you might as well contend that a man rowing to reach a certain point voluntarily reversed his action and sought to make the boat go the other way. The acts of Lynch and Herron, to be consistent, to be at all reconcilable with their known purpose—a purpose admitted by those who tried to testify against them—must have been what they themselves said it to have been, they must have voted for Hawkins and Longstreet. This is the only fact in dispute, and the principle that men must be presumed to act from their known motives settles it.

One other point alone remains to be considered in connection with the organization of that board. I can hardly call it a point of law; it seems to me it should be called a point of force, a point of lawlessness. It is as to whether the governor had the right to displace General Herron as secretary of state, and substitute in his stead Wharton. It is to be remarked here that both Governor Warmoth and the complainant, so far as the title of General Herron to the office of secretary of state is concerned, are in the situation of parties to an ejectment suit, each claiming under the same title. For the purpose of this case, General Herron was *de jure* as well as *de facto* secretary of state. Indeed, Governor Warmoth, to be consistent, must contend that he had the highest sort of title, because he had been installed in this office by a police force, a source of title much resorted to by him during his administration. But the story that the executive of this State tells your honor as to the displacement of General Herron is this: "I found that General Herron was a defaulter, and thereupon I removed him and appointed another secretary of state," when the very act which authorizes a defaulter to be removed provides that he shall be removed after a judicial investigation and a judicial finding. So that the pretext put forward by the governor for removing General Herron as a matter of law pertaining to this case is too idle to require comment. Viewed as the act of an executive of a State, coming into a court in chancery and solemnly spreading upon the record that he thus disregarded all law in the name of a conservator of law, it would merit the severest reprehension, was it a matter proper to be animadverted upon. To my mind, he might as well and as properly have come into court and stated that he shot General Herron as that he removed him. He would have as much law for shooting as for removing, and I think he takes nothing by this point; and the only inference that can be drawn from his attempt to remove General Herron is, that he was perfectly willing to set aside all law, and that he did not even claim to be governed in his action as executive by law.

I am reminded in this connection of a remark made during the investigation before the congressional committee, in the adjoining room, by my friend Colonel Carter, who was testifying as a witness before the committee. Mr. Steele was conducting the examination. It appeared that Mr. Bovee, the predecessor of General Herron as secretary of state, had been elected by the people at the same time with the governor, and his term of office was the same; that the constitution provided alike that the governor and secretary of state should be removed by impeachment, or the address of two-thirds of both houses; that Governor Warmoth, without any articles of impeachment, without any action of the legislature, without any action of any court, himself decided that the secretary of state had improperly promulgated a law, and, therefore, should cease to be secretary of state, and thereupon by the force of the

police he ejected him from the office of secretary of state and inducted another in his stead. Said Mr. Steele, "Colonel Carter, what pretext was there for the attempted removal of Mr. Bovee?" "Well," said Colonel Carter, "I do not know of any clause of the constitution upon which it is based, but I believe they call it the *supreme executive power*."

Now, if the court pleases, this supreme executive power, unknown to the law or the constitution, uncontrolled by constitution or statute, and backed up by police, constabulary and military power, may be defined to be the source of all our woes in this State, and comes pretty near what in old times they used to call a despotism, and it seems to me that it is an act of a character which an executive would be slow to spread upon the records of this court.

I wish to say a word about General Herron.

He has been assailed by one of the solicitors on the other side. I know not why. I know his family. I know him personally. I know his record. He is a gentleman by birth and instinct. His family is one of the most respectable in the land. He is a man of parts, not easily trifled with, and he had a record in the Federal Army, commencing, I think, as a lieutenant and ending as a major-general, which, for brilliancy and for the real bravery which it evinces, any man in the world might be proud of. I say this, not that I think General Herron needs it, but I think it simple justice to him that it should be said.

Now, then, according to the facts, as they appear in this case, the governor, Mr. Lynch, and General Herron went on and elected Longstreet and Hawkins. These four gentlemen, together with Governor Warmoth, are, it seems to me, beyond all contravention, the board of canvassers of the State to-day. It matters not that the governor has signally failed in his attempt to manipulate the board; it matters not that it will seriously interfere with all his plans; it matters not that it will count men out, and perhaps justly, whom the governor would like to have counted in; but, according to the law and the facts, these five men are the legal board of returning-officers. And all the complainant asks for is that this board of canvassers shall be allowed in a proper way to complete its canvass, and fairly ascertain the result of this election.

Here is a State which has just gone through a general election, and some three or four hundred officers have been voted for by the people, and the whole machinery of the State is stopped simply because the governor has failed to make up a board of canvassers as he pleased. All that is asked is, that the clearly legal board shall be allowed to go on with the canvass according to the established laws, and we shall have done with this tremendous disregard of the rights of the people, with this tyranny, with this unauthorized, unjustifiable conduct on the part of the executive. We have had quite enough of it, and we never shall swing back into the groove of law and order until we cease to justify or to attempt to avail ourselves of such infractions of law. It is useless to talk about inaugurating reforms through and in the name of such violations. The legal question as to the board of canvassers is, Are these men the legal board of canvassers? The question, so far as it concerns the community, is, Shall there be a fair count? Shall the officers elected be declared to have been elected, or shall we have this one-man power coming in upon us and despotically putting out one board of canvassers and putting in another? Shall all this avail this executive in a court which is bound to probe to the bottom all his claims of law and equity? It seems to me as if the approval of this act referred to was in accordance with the design of the governor, to

create great confusion in this community, and in the midst of that confusion have his board of canvassers inaugurated, and to have at the meeting of the legislature, which he has convoked, something very similar to the scenes of last winter, when a cordon of policemen settled the question as to who was or was not a member of either house. Does any man doubt why this act was approved who is familiar with the facts of the times? This law, which all my friends and I myself labored last winter to have passed, and which the people of this State demanded almost at the point of insurrection, should be passed—that this should be allowed to slumber until the election, which it was desired to affect, had passed, and then on the 20th day of November it should be approved. Do you think that this was done from motives of public utility, from a desire to advance the public weal? Or was it simply to carry out the private purposes of Henry Clay Warmoth, in the interest of which this State government has been run for the last two years? I submit that this act should have no favor from this court; that it was avowedly to affect the jurisdiction of this court, to marshal the votes so that on the 9th of December, by a careful adjustment of the police and military, he could, upon the assembling of the legislature, manage things as he pleased. It seems to me that this was the whole intent of his approval. If so, it was not worthy in design, and cannot avail him in any respect to escape the jurisdiction of this court and the authority of its orders.

But, your honor, suppose that this court were at this stage of the case to drop its hands from this action, and that we were to be refused this injunction, and that your honor should take no action as a chancellor in reference to the preservation of these most important records called returns, how would it leave this community—because I cannot listen to gentlemen urging facts outside the case, and trying to press them upon the court, when it seems to me that all the morale, all the equity, all the motives from a high-toned public policy are clearly with the complainant. But what would happen if your honor should refuse us this remedy? Why, the result would be a repetition of the events of last winter—that a legislature will be attempted to be inaugurated which shall be selected by Governor Warmoth and his police officers. Will this community stand this? Will the great northern community sympathize with it? Will Congress look with favor upon it? Will the Chief Executive of this nation, charged with the high responsibility of recognizing and determining the political status of governments, subject only to the revision of Congress, will he, I ask, allow it? What would it be but plunging us anew into these scenes which have so disgraced us, so impoverished us, I might almost say, so pauperized us? How can we get out of these things until with one voice the people say we have done forever with this business of the executive supremacy, with this supreme executive power? For if we are to live under a tyrant, let us at least select him; and let us select him as a monarch, with a view to founding a monarchy, which shall at least be respectable.

Bear with me while I make a personal allusion: Some reference has been made by two solicitors, my friends on the other side, to events which happened at "Baton Rouge," where my friends presented my name as a candidate for the governorship. I have only to say that the events which there transpired and which have since transpired here, only satisfy me in a way dearer to me than any other act, of the kindness and sympathy and the interest of the people of this community of all classes in my humble self. I recollect nothing of Baton Rouge except the gratification which that disclosure created; and I should illy repay this

community, who have in all things and with one accord been kind to me, did I not upon every occasion, and especially upon this, raise my voice against any attempt at further Mexicanizing this State government.

Toward the two parties who were voted for as candidates for governor in the last contest I entertain nothing but the kindest feelings, nothing but the most profound respect. I know Colonel McEnery's record well, and it is certainly a most creditable one. Mr. Kellogg appears to me in the first place as the recognized candidate of the republican party who has, as I believe, been elected as governor of this State. He comes also from a position in the senate with a record of which any man in this country might be very proud. He has labored for the material interest of this State there, and he has labored for the protection of the proscribed here, and it seems to me he has with distinguished talent done the full measure of his duty as senator. I believe that either Colonel McEnery or Mr. Kellogg would discharge the duties of the office of governor with all their ability, and the ability of either is not small. But I would not be willing that either of them should obtain his seat by the waywardness and unhallowed manipulation of the law by a despotic executive. In arguing this case I feel it is not the case of Kellogg against Warmoth that I am urging, but that of all the people of the State of Louisiana against Henry C. Warmoth. I have no personal feelings against Governor Warmoth. Personally, I have the kindest feelings towards him. When he was at the age of twenty-four years inaugurated governor of this State, with the tremendous opportunities before him which he then possessed, he had my most hearty sympathy. When he was hissed in the theater, simply because he was elected by the colored votes, he had my outspoken sympathy. When I saw him, from motives, as I thought, of personally aggrandizing and enriching himself, perverting, and, indeed, subverting the whole system of our government, at a time when, if we had had a good man for governor, we could have had as good a government as they have in Massachusetts; when I saw him doing all this, and when I saw the disasters that, through his conduct, have one after another rolled in upon this State, I could not withhold my voice from speaking against such acts. Let them be continued, and when the next congressional committee meets here and asks a witness as to the value of real estate in New Orleans, instead of stating that he would not take the lower part of the city and pay the taxes, he will say that he will not take the whole city and pay the taxes.

In conclusion, I ask your honor, not alone in the name of the rights of Mr. Kellogg, which are so clear and transparent, but in the name of the whole people of this State, to save us by the method which in the providence of God has been put into your hands—to save this community and this State, which I know your honor loves with an endearment which has resulted from your residence of many years here—to save them from this lawless and debauched rule—to save them from this despotism—to save the State, as only it can be saved, by the firm, fearless, and swift launching of the mandates of this court against this high-handed wrong-doer.

Circuit court of the United States, fifth circuit and district of Louisiana.

CESAR C. ANTOINE
vs.
HENRY CLAY WARMOTH ET AL. } In equity—No. 6851.

Bill of complaint.

DISTRICT OF LOUISIANA, *ss:*

To the judges of the circuit court of the United States for the district of Louisiana:

Cæsar C. Antoine, of Caddo Parish, a citizen of the State of Louisiana, brings this his bill against Henry C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, William Vigers, Charles H. Merritt, Y. A. Woodward, D. B. Penn, S. Armstead, B. P. Blanchard, the board of metropolitan police, a body corporate duly incorporated by the laws of the State of Louisiana and domiciled in the city of New Orleans, whereof P. B. S. Pinchback is president, and William Baker, Jas. Reynal, William Robinson, R. Brewster, and George Baldy are members; A. S. Badger, superintendent of metropolitan police, and Thos. Isabelle, P. S. Wiltz, J. S. Taylor, J. E. Austin, G. De Ferret, E. Booth, A. Voorhies, A. J. Lewis, B. F. Jonas, T. B. Stamps, D. S. Cage, R. C. White, T. C. Anderson, J. M. Thompson, E. L. Weber, A. S. Herron, Robert Worrell, O. H. Brewster, E. M. Graham, J. W. McDonald, A. H. Leonard, C. J. C. Pucket, James G. White, J. F. Kelly, J. J. Millon, and James Timony; J. A. Shakespeare, J. A. Rice, and J. Finney; E. H. McCaleb, Charles Montaldo, W. B. Barrett, and W. L. Stanford; T. B. Blanchard, F. C. Zacharie, F. Fusillier, V. O. King, A. Garidal, L. S. Roderiques, John Barrow, John Delaney, William Steven, W. C. Kinsella, C. Kummell, J. B. Eustis, J. McConnell, A. J. Dumont, E. L. Bower, E. Riviere, P. Landry, and C. N. Lewis, of Ascension Parish; E. B. Cox and Nunea Vives, of Assumption Parish; T. J. Edwards and W. K. Johnson, of Avoyelles Parish; T. L. Mills, T. Bynum, and J. S. Gardere, of East Baton Rouge; J. L. Lobdell, West Baton Rouge; W. S. Corkeran, of Bienville Parish; W. H. Scanland and L. P. Sandedge, of Bossier Parish; J. C. Moncure, George L. Smith, and J. Sella Martin, of Caddo Parish; W. H. Kirkman, of Calcasieu Parish; Thomas J. Humble, of Caldwell Parish; Paul Jones, of Cameron Parish; George C. Benham and Cain Sartain, of Carroll Parish; Allen J. Davis, of Catahoula Parish; W. F. Moreland and Thomas Price, of Claiborne Parish; David Young and George Washington, of Concordia Parish; J. B. Elam and A. F. Stephenson, of De Soto Parish; John Gair and James Laws, of East Feliciana Parish; James W. Armstead, of West Feliciana Parish; F. W. Norris, of Franklin Parish; J. H. Hadnot, of Grant Parish; L. A. Snaen, of Iberia Parish; J. R. Cavannaugh, of Jackson Parish; E. H. Hubin, William Kern, and C. W. Lowell, of Jefferson Parish; J. D. Frahan, of La Fayette Parish; John S. Billim and O. Harang, of La Fource Parish; T. G. Davidson, of Livingston Parish; James R. McDowell, of Madison Parish; C. C. Davenport, of Morehouse Parish; E. L. Pierson and W. A. Ponder, of Natchitoches Parish, W. F. Southard, and D. Hill, of Ouachita Parish; H. Mahoney, of Plaquemines Parish; J. P. Harris and L. B. Clairborne, of Pointe Coupee Parish; L. Texada, John J. Swan, and J. P. G. Hooe, of Rapides Parish;

E. W. Dewees, of Red River Parish; H. F. Vickers, of Richland Parish; J. F. Smith, of Sabine Parish; R. V. Ducros, of Saint Bernard Parish; M. Hahn, of Saint Charles Parish; D. K. Gorman, of Saint Helena Parish; Henry Demas, of Saint John Baptiste Parish; Benjamin R. Gantt, J. F. Little, E. D. Estilette, and L. D. Prescott, of the Parish of Saint Landry Parish; Victor Bochon and L. A. Martinet, of Saint Martin's Parish; James Costello and M. J. Foster, of Saint Mary Parish; J. G. Tate, of Tangipahoa Parish; J. R. Stewart and J. S. Mathews, of Tensas Parish; J. J. Booles, of Union Parish; P. Fontelieu, of Vermillion Parish; J. R. Smart, of Vernon Parish; A. C. Bickham, of Washington Parish; J. P. Shultz, of Webster Parish; W. A. Strong, of Union Parish; all citizens of the State of Louisiana, and inhabitants thereof; and thereupon your orator complains: That in accordance with the constitution and laws of the State of Louisiana a general election was held in said State in all the parishes thereof on the fourth day of November, in the year of our Lord 1872, at which election there were, by law, to be voted for and elected, a governor and lieutenant-governor, as well as all officers in the executive, judicial, and legislative departments of the government of the State of Louisiana; that at said election your orator was duly nominated for and was a candidate for election by the suffrage of the lawful voters of said State for the office of lieutenant-governor of said State, to which office he was and is in all things eligible; that at the same election the said defendant D. B. Penn was also a candidate for election to the same office; that according to the law of the State of Louisiana governing and controlling said election no person was a qualified elector, or entitled to vote at said election, until he had been registered in a list of persons entitled to vote at said election; that the provisions of the law of said State relating to registering vested the appointment of the officers, whose duty, by law, it was to register all such voters, in said Henry C. Warmoth; that at all times since your orator (who is a person of color) became a candidate for such election, the said Henry C. Warmoth, governor of said State, has repeatedly avered his intention to adopt and use all the means in his power, and to so exercise unlawfully and extend his power, and the power conferred upon him by his position as governor, as to unlawfully defeat the election of your orator; that for that purpose and to aid in said scheme, he appointed the said defendant, B. P. Blanchard, State register of voters, a person in all things pliable and subservient to his will, and willing in all things and by all unlawful means to aid and assist the said Henry C. Warmoth in executing his said plans and schemes; that he also, in the appointment of supervisors of registration, and assistant supervisors of registration, so selected persons for said offices as to obtain those also pliable to his will, and who would concur with and aid him in the execution of his unlawful plans and fraudulent devices. To that end and for that purpose, your orator is advised, informed, and verily believes, the said Henry C. Warmoth did especially make it a condition precedent to the appointment of such officers, that they should in all things, and by all unlawful means within their power, assist in the accomplishment of said ends; and your orator further saith that one of the unlawful devices, plans, and schemes of the said defendant Henry C. Warmoth was through the instrumentality of his said officers, and with their aid and by the pretended aid of laws of the State to disfranchise a large number of the citizens of the State of Louisiana of African descent, in all respects lawfully entitled to the franchise, by refusing to register the said citizens upon the list of registered voters, by reason of their race and color,

and by such means to deprive your orator of the vote of a large number of the citizens of the State, which votes, if the same had been permitted to be cast and deposited in the ballot-baxes, would have been cast in favor of your orator; that in the execution of, and carrying out of, said scheme the said Henry C. Warmoth and his said confederates were so far successful as to prevent the registration upon the lists of registered voters of a large number of persons lawfully entitled to vote. That your orator verily believes that at least ten thousand voters were so refused or prevented from registration.

And your orator further shows unto your honors that after the time for registration of voters in said State, immediately prior to said election, had expired, the said H. C. Warmoth and his said confederates, in order to further effect and carry out their said unlawful schemes to deprive your orator of his election to said office of lieutenant-governor, not content with having deprived said citizens of the opportunity and right of registration, afterward, and on the day of said election, when said persons so refused registration as aforesaid offered to deposit their ballots for your orator in the ballot-boxes at the place of election, did cause them to be refused the right to deposit said ballots, to the injury of your orator. That your orator is in possession of evidence of that fact, preserved under the provisions of the act of Congress approved May 31, 1870, entitled, "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes," and the acts amendatory thereto, and your orator avers that he is informed and verily believes that the number of persons of color and of African descent who, on the day of said election, so offered to deposit their ballots for your orator in the ballot-boxes at the various polling-places in the State of Louisiana, would fully amount to ten thousand persons, and that the persons so offering said ballots were in each and every instance persons of color, and were refused the right of franchise on account of race and color.

And your orator, further complaining, shows unto your honors that he has reason to believe and does believe that on the day of said election a large number of citizens of the State of Louisiana, in all things duly entitled to and qualified to vote, did on the day of said election deposit their ballots in the ballot-boxes for your orator for said office, and their ballots should in law and justice have been counted for your orator as tending toward establishing his election to said office, and that said ballots, after the same had been so cast and deposited, were excluded from count and consideration, and that the said defendant Henry C. Warmoth, conspiring and combining with the said defendant B. P. Blanchard, and with the supervisors and assistant supervisors of registration by him so appointed as aforesaid, has caused a dishonest, incorrect, and false count of the votes cast in the several parishes of said State at said election, and has falsified and caused false, untrue, and fraudulent returns and certificates of the result and canvass of the votes cast in the several parishes in said State at said election to be made and returned, and that said count, canvass, and certificates are so false and untrue, for the reason that a large number of the ballots deposited in the ballot-boxes at said election by persons of color have not been counted and considered, and the evidence thereof preserved and certified so that the same may be canvassed and considered by the returning-officers for elections in said State, and he verily believes that the votes and ballots so suppressed were cast for and in favor of your orator as lieutenant-governor of said State, and if considered and counted, as they should have been, would in all things been sufficient to elect him to said office, and your orator avers that he has reason to believe and does believe that said votes and ballots

were so rejected and said returns and certificates so falsified in furtherance of and as part of said scheme to deprive a sufficient number of persons of color and of African descent of the right of franchise, and to so suppress a sufficient number of ballots cast by said persons from your orator for his office as lieutenant-governor, so as to make it appear that your orator had been defeated and that the said defendant David B. Penn had been elected, and your orator thereby deprived of said office and the emoluments thereof, to which he is lawfully entitled.

And your orator further shows unto your honors that said scheme of fraud and wrong was far reaching in its character, and that it was the intention of the said defendant Henry C. Warmoth, and of the said defendant B. P. Blanchard, whom for said purpose the said defendant Henry C. Warmoth found a pliant and willing tool, not only to compass and accomplish the said scheme of defrauding of their lawful right of franchise a large number of the legal voters of African descent, but also to so manage and control their said scheme as to destroy the proofs and cover up the means and instrumentalities by which it had been effected; that for that purpose the said defendant, B. P. Blanchard, State registrar of voters, with the knowledge and connivance of the said defendant Henry C. Warmoth, issued secret directions and instructions to the several supervisors of registration in the various parishes of the State, and through them to the commissioners and other officers connected with the State election, tending to inform such officers of the means by which said frauds were to be effected, and the steps and precautions to be taken to cover and conceal from discovery their acts and intentions; that said instructions were in part oral and in part written; that said defendants were well aware that the officers (supervisors of registration and election) appointed by authority of the United States, if allowed to discharge the duties required of them by the laws of the United States, would discover and prevent the consummation of their plan, and that in order to defeat the purposes for which said acts of Congress were adopted, and in order to deprive your orator of the evidence of frauds and of the rejection of votes on account of the race and color of the voter, the said defendant B. P. Blanchard unlawfully wrote and delivered, or caused to be delivered to each of said supervisors of registration confidential instructions, of which the following is a specimen:

[Confidential.]

STATE OF LOUISIANA, OFFICE OF STATE REGISTRAR OF VOTERS,
New Orleans, October 24, 1872.

SIR: In addition to the instructions contained in circular No. 8, from this office, you are instructed:

1. In counting the ballots after election, count first the votes cast for presidential electors and members of Congress, keeping separate tally-lists on the Form No. 1, provided for that purpose, and making up and completing the statement of votes for each poll upon Form No. 1, then close the box, reseal it, and proceed in a similar manner until all the national votes have been counted. Then proceed with the counting of the State and parish votes, bearing in mind the fact that the United States supervisors of election and deputy marshals have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish votes.

2. As soon as the count in each case is completed telegraph the result to this office at once; should there be no telegraph-office at the court-house, dispatch a messenger by the quickest route to the nearest telegraph-station.

3. The stationery, &c., furnished for each parish is to be equally distributed among all the polling places, and at least one copy of the election laws must be furnished to each poll.

Respectfully,

B. P. BLANCHARD,
State Registrar of Voters.

L. E. BENTLEY, Esq.,
Supervisor of Registration, Parish of Ascension.

That said instructions were so given in order to deprive your orator of the benefit that would have accrued to him by the evidence of the rejection of the votes of persons of color being preserved, which would have been the case had the inspectors of election appointed by the authority of the United States been permitted to perform their duties. Your orator avers that the sole purpose of the said defendants Henry C. Warmoth and B. P. Blanchard in excluding from the canvass of the ballots cast at the said election the Federal supervisors of election, was to enable them to reject said votes without hinderance, and without any record of their wrongful act, being kept or preserved in such manner as to be of value to your orator as evidence to establish his right to said office; and your orator further shows unto your honors that in order to further perfect and execute said scheme of fraud, the said B. P. Blanchard as State registrar of voters issued to the several supervisors of registration other secret and confidential instructions to be observed by them in the conduct of said election, of which the following is a specimen:

[Confidential.]

STATE OF LOUISIANA,
OFFICE OF STATE REGISTRAR OF VOTERS,
New Orleans, October 28, 1872.

SIR: You will please direct commissioners of election to receive no votes upon the affidavits supplied by the radical party under the enforcement act, unless the person applying or offering to vote is known by them to have been wrongfully refused registration.

Respectfully,

B. P. BLANCHARD,
State Registrar of Voters.

L. E. BENTLEY, Esq.,
Supervisor of Registration, Parish of Ascension.

P. S.—In case of rejection of any vote upon such affidavit call upon *respectable* gentlemen present at the polls as witness.

Your orator avers that confidential communications of like character were addressed to all the supervisors of registration, and that said communications conveyed to said supervisors of registration a meaning beyond that which was apparent upon the face of them, and that they were written in accordance with a concert and agreement existing between said Blanchard and the State supervisors of registration, which conveyed to them the real import and meaning of such communications; that said instructions were intended, and in fact are directions to the said supervisors of registration, to unlawfully reject the ballots of persons of color, and that the word *wrongfully*, underscored in said communication, has a meaning very different from its common signification and was intended to direct the said officers of election to discriminate against persons of color and African descent.

And your orator further shows unto your honors that whenever the said defendant Henry C. Warmoth discovered that any of said supervisors of registration, were unwilling to embark in said scheme of fraud and were unwilling to obey his instructions and aid in his schemes, he, without authority of law, dismissed them from office and appointed such persons in their stead as would in all things aid in the execution of his said scheme, and through the instrumentality of such wrongful and despotic acts obtained supervisors of registration completely subservient to his will.

And your orator further shows unto your honors that in order to fully consummate the said scheme of wrong and fraud, it was necessary and

important for the said Henry C. Warmoth and his said conspirators and confederates to so obtain control of the canvass and board of returning-officers, whose duty it was to canvass, estimate, and determine the ballots cast at said election in favor of the several candidates for election, as to prevent discovery of the fact that a large number of ballots deposited at said election had been excluded from the count of such ballots on account of the race and color of the voters by whom such ballots had been deposited for your orator, as well as to prevent any count, canvass, or estimate of the ballots of such persons of color as had been offered to be deposited in the ballot-boxes for your orator by persons of African descent as aforesaid, and which by the laws of the United States should have been considered counted and credited to your orator.

And your orator, further complaining, shows unto your honors that, by the law of the State of Louisiana governing elections, it is made the duty of the supervisors or assistant supervisors of registration for the various parishes in said State, immediately upon the close of the polls on the day of election, and after the ballot-boxes had been by the commissioners of election returned in due form of law to the supervisors of registration, to proceed, in the presence of the commissioners of election and three freeholders of the parish for each poll or voting-place therein, to open the ballot-box and count the ballots therein, and make a list of all the names of the persons and officers voted for, the number of votes for each person, the number of ballots in the box, the number of ballots rejected, and the reason therefor; that such statement is required to be made in triplicate, and each copy thereof signed and sworn to by the commissioners of election of the poll and by the supervisors of registration; that it is the further duty of said supervisor to inclose in an envelope of strong paper or cloth, securely sealed, one copy of such statement from each poll, and one copy of the list of persons voting at such poll, and all memoranda and tally-lists used in making the count and statement of the votes, and send such package by mail plainly and properly addressed to the said defendant Henry C. Warmoth, governor of the State.

And your orator, further complaining, shows unto your honors that the law of the said State provides that the governor, lieutenant-governor, secretary of state, and John Lynch and T. C. Anderson, or a majority of them, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections; that in case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy should be filled by the residue of the board of returning-officers; that said law further provides that, within ten days after the closing of the election, said returning-officers shall meet in New Orleans to canvass and compile the statement of votes made by the supervisors of registration, and make returns of the election to the secretary of state; and they shall continue in session until such returns shall have been completed; that the governor shall at such meeting open, in the presence of said returning-officer, the statements of the supervisors of registration, and that the returning officers shall, from such statements, canvass and compile the returns of the election in duplicate; that one copy of such return shall be filed in the office of the secretary of state of said State, and of one copy they shall make public proclamation by printing in the official journal, and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been lawfully elected; the returns of the elections thus made and promulgated are, by said

State law, declared to be *prima-facie* evidence in all courts of justice, and before all civil officers, of the right of any person named therein to hold and exercise the office to which he shall by such returns be declared elected.

And your orator further shows that, by the law of said State, the said board of returning-officers are vested with full and competent authority and jurisdiction to examine into the truthfulness of any such statement. Certificate of return to hear testimony, require the production of papers and to investigate into the fairness of the election in any of the several parishes, polls, or election precincts in said State, and to determine whether persons who were by law lawfully entitled to vote at such election, were deprived of or refused the right of franchise by reason of race, color, or previous condition, or otherwise, and if it appears that a sufficient number of the qualified electors entitled to vote at any poll or voting-place, were refused the right of franchise unlawfully, so as materially to change the result of the election, said returning-officers are prohibited from canvassing or compiling the statement of votes of such poll or voting-place in their returns, but are required to exclude it therefrom.

Your orator, further complaining, shows unto your honors that ten days after said election and at the time when said returning-board was by law required to meet, the same did so meet; that the defendant, H. C. Warmoth, as governor of this State, was present at such meeting; that P. B. S. Pinchback, lieutenant-governor; Francis J. Herron, secretary of state; and John Lynch, were also present, constituting a majority of said board; that it was then and there determined that said P. B. S. Pinchback and T. C. Anderson being candidates for office at said election and interested therein, were disqualified from acting on said board, thereby reducing the members of said present to the said defendant Warmoth, the said Francis J. Herron, and the said John Lynch, who still constituted a majority of said board; the said board then proceeded, by authority of law, to fill said vacancies in said board, and filled the same by the election of Jacob Hawkins and James Longstreet; that said board was thereupon properly organized to proceed to said canvass and were duly sworn according to law.

And your orator further shows that said defendant, Henry C. Warmoth, pretending to be in possession of the returns of a large number of supervisors of registration, refuses to open said statements of supervisors of registration in the presence of said returning-officers, being influenced in such refusal, as your orator verily believes, by the fear that said returning-board would make due and proper investigation of the truthfulness of said returns and statements, and that the said scheme for excluding lawful ballots would be defeated, or that evidence of the fraud that had been so committed, and of the fact that a large number of persons had at such election offered to vote and had been denied the right to vote, contrary to the Constitution and acts of Congress, would be discovered and preserved in such form that the same could be used and of avail in any action of proceedings instituted by your orator to determine his right of office of lieutenant-governor of said State; but the said Henry C. Warmoth made frivolous excuses for not discharging his said duty, and said board of returning-officers adjourned until the next day without any further action, when, in order to cover up and conceal said frauds, and to prevent the proper legal canvass of said votes, the said defendant, Henry C. Warmoth, without any legal authority or color of law, pretended to eject the said Francis J. Herron from the office of secretary of state, and with force and arms

attempted to take forcible possession of the records and archives of the office of secretary of state into his custody, and, without warrant or color of law, pretended to appoint the said defendant, Jack Wharton, to the office of secretary of state; and that the said Jack Wharton, willing to aid in the said unlawful scheme, pretended to be secretary of state, and, as such, a member of the said returning-board; that said defendant, Henry C. Warmoth, thereupon pretending that he had conferred the office of secretary of state on said Wharton, combined with said Wharton, and they together pretended to have elected as members of said returning-board the said defendants, Frank H. Hatch and Durant Da Ponte; and that, although they and all of them were well aware that all said actings and doings were, in all respects, fraudulent and in violation of law, and that none of the said defendants, except the said defendant Warmoth, had any colorable right to proceed to the canvass of said statements, certificates, or returns, and that he, the said Warmoth, had no right to open or submit the same to any persons other than the said Lynch, Hawkins, Longstreet, and Herron, yet the said defendants, Warmoth, Wharton, Hatch, and Da Ponte, in order to aid in such scheme of fraud, pretend to be a lawful returning-board; that the said defendant, Warmoth, as your orator is informed and verily believes, while refusing to open and deliver said statements, certificates, and returns to said legal returning-officers, who were organized and in actual session, has in fact opened and submitted the same to said conspirators and intruders, excluding said lawful returning-officers from any canvass; that your orator believes, and therefore avers the fact to be, that it is the intention and deliberate plan of the said defendants aforesaid, pretending to act as returning-board as aforesaid, to make such pretended canvass of said votes as shall effect an apparent defeat of your orator, and declare said D. B. Penn elected as lieutenant-governor of said State; that, to produce said results, they intend to give such effect to such fraudulent certificates and returns as tend to produce such result, and intended to exclude from all consideration, count, or canvass all votes of persons of color that have been suppressed or prevented from being cast; and that it was their intention by such frauds to deliver to the pretended secretary of state such certificate or returns or pretended result of their canvass as would make it appear that your orator is defeated and the said D. B. Penn elected, and thereby deprive your orator of said office; and that while their canvass or return, as your orator is informed, would be perfectly void in law, yet the same would embarrass, hinder, and delay him in the prosecution by legal proceedings in this honorable court to establish his rights to said office, to which he verily believes he is justly entitled, and to which he has been legally elected; that he is informed and believes that it was the intention of the said pretended returning-board, in furtherance of the scheme, to destroy all of said returns and certificates received from the supervisors of registration, and thereby suppress and place beyond the reach of your orator evidence which would be important and indispensable in the prosecution of legal proceedings to establish his right to said office; and he verily believes that it is the intention of said defendant, Warmoth, to place all the said certificates and returns of supervisors beyond the reach of the regularly-constituted board of returning-officers, and thereby deprive your orator of any legal official canvass of said votes, and of the evidence that a just, honest, and truthful canvass of said votes by the officers or persons by law designated to canvass the same would furnish, tending to show his right to said office of lieutenant-governor.

And your orator further shows unto your honors that, after the organization of said board of returning-officers, as above set forth, that the said F. J. Herron, acting as *de facto* secretary of state, and while they were engaged in the canvass of said votes and certificates, by the judgment of the honorable the supreme court of the State of Louisiana, in a case depending in said court, the said F. J. Herron was ousted from the office of the secretary of state, and George E. Bovee, the duly-elected secretary of state, re-instated in said office; that immediately after said judgment, and about the 2d day of December, 1872, the said Bovee, having taken and subscribed the oath required by law, became one of said returning-officers in the place of said Herron.

And your orator further shows unto your honors, that on or about the 16th day of November, 1872, Wm. Pitt Kellogg, a candidate for governor of said State at said election, in order to arrest the said fraudulent acts of the said defendants, Warmoth, Wharton, Hatch, and Da Ponte, and to prevent the consummation of such frauds to his injury, filed and exhibited his bill of complaint in this court, on equity side thereof, against the said last-mentioned defendants, which said case is numbered 6830 of the docket of this court, and obtained from your honors such restraining orders and injunctions as should have completely arrested and terminated said scheme.

Your orator, for further detail and particular in this behalf, craves leave to refer to the record of said proceedings in equity now remaining in the court.

And your orator further shows unto your honors that said defendant, Henry C. Warmoth, having no regard for either the laws of the State of Louisiana or the laws of the United States, or the orders and directions of this honorable court, in a great measure disregarded the commands of your honors; but when he became apprehensive that this honorable court would enforce and compel obedience to its orders and mandates, and that it was unsafe to disregard the same in all respects, he, in collusion and confederacy with the defendant, herein concocted and devised another more daring flagrant device and scheme for defeating the ends of justice and consummating his device and scheme for depriving as well the said Kellogg as your orator of the benefit of a just and legal canvass of said votes and of the evidence pertaining to said election; that he still refuses, and at this time, in defiance of the order of this honorable court, continues to refuse, to submit the certificates and returns relative to said election to said board of returning-officers, pronounced by the judgment of this honorable court to be the legal returning-officers to canvass and make returns of the ballots cast at said election, but endeavored to thwart and circumvent the orders and will of this court by approving an act of the general assembly of the State of Louisiana, which he claims was in his possession for consideration and approval; that a copy of said act is herewith filed, marked Exhibit A, and made part hereof; that the said act of the legislature made and makes, if the same be of any binding import and value, (which your orator denies,) no material change in the election laws of this State, with the bare exception that said last-mentioned act provides that the board of returning-officers, although charged with precisely the same duties and powers as those imposed by the act in force when said election was held, provides a different method and manner of designating and appointing the returning-officers, requiring such officers to be elected from the various political parties by the vote of the senate of the State; that after having approved and, as he pretends, given the effect of law to said last-mentioned act of the legislature, the said H. C. War-

moth, pretending that the effect of said approval of said act was in law to sweep out of existence the board of returning-officers, who were engaged in lawfully canvassing the result of said election, did, in a surreptitious and clandestine manner, secretly combining and confederating with the said defendants, Thomas Isabelle, P. S. Wiltz, J. S. Taylor, J. E. Austin, and George De Feriet, pretend to usurp the province and power of the collateral branch of the general assembly of said State, a branch of said assembly not at that time in existence, except as to part thereof, less than a quorum, and pretended to appoint the said last-named defendants returning-officers to canvass, consider, and make returns concerning said election.

That your orator is informed and verily believes that they pretended to hold a session as returning-officers, to do the bidding of the said defendant, Warmoth, and although well knowing that they had no right or authority as returning-officers, and that the said H. C. Warmoth could confer no such authority upon them, that they, in combination with the said Warmoth, and in defiance of the orders of this court, did pretend to make a partial canvass of said election, and did publish in the New Orleans Times, a newspaper published in the city of New Orleans, a pretended proclamation, a copy of which is herewith filed, marked Exhibit B, and made part thereof; that the said defendants and the said persons named in the said proclamation, conspired together and caused said proclamation to be made, for the purpose and with the intent of unlawfully creating and establishing the persons named in said proclamation a general assembly for the State of Louisiana, to be convened under color of title pretended to be conferred by said pretended canvass and proclamation as a general assembly, well knowing that they derived no title or evidence of election from said wrongful acts, and well knowing that many of the defendants, herein named in said proclamation, had never been elected to said pretended positions in the general assembly of said State; that the said defendant, Warmoth, and the said defendants named in said proclamation, intended, and still do intend, to convene, at the city of New Orleans, on the 9th day of December, 1872, pursuant to the proclamation of said defendant, Warmoth, and unlawfully, and in furtherance of said scheme of wrong, pretend to act as a general assembly, and proceed, as such general assembly, to announce and declare the said D. B. Penn elected to the office of lieutenant-governor, and thereby deprive your orator of said office, and of any possibility of asserting his right to have canvassed and effect given to the votes of persons of color so cast and offered to be cast for your orator, the said defendants pretending that, as to the offices of governor and lieutenant-governor when so unlawfully convened, they can act arbitrarily in deciding said election, without any other count, estimate, or evidence of the votes cast and counted, or votes that should be counted, than they may arbitrarily be pleased to consider.

And your orator further shows unto your honors that, by the law of the State of Louisiana, it is the duty of the secretary of state to transmit to the clerk of the house of representatives of the last general assembly, the said defendant, William Vigers, and to the secretary of the senate of the last general assembly, the said defendant, Charles H. Merritt, a list of the names of such persons as according to the returns of the lawful returning-officers have been elected to either branch of the general assembly; and that it is the duty of the said clerk of the house of representatives, the said Vigers, and the said secretary of the senate, the said Merritt, to place the names of the representatives and senators elect upon the rolls of the house and

senate, respectively; and that those representatives and senators whose names are so placed by the said clerk and secretary, respectively, of the house of representatives and senate, and none others, are competent to organize, respectively, the house of representatives and the senate; that the said Jack Wharton, willing in all things to aid the scheme of said defendant, Warmoth, pretends, although wholly without title thereto, to be secretary of state, and the said defendant, Warmoth, for purpose of fraud, favors and abets his said pretensions; that the purpose of said scheme of fraudulent canvass, proclamation, and designation of pretended members of the general assembly was to set on foot and devise the following schemes to accomplish the end arrested and defeated by the orders and writs of this honorable court, above referred to, the plan being as hereinafter set forth: The said defendant, Jack Wharton, pretended to act as secretary of state, under the direction and with the connivance of said defendant, has made and delivered to the said Charles H. Merritt, secretary of the senate, a list of the names of the persons defendants herein designated in said fraudulent proclamation as senators, well knowing said proclamation to be false and of no effect: and it is the intention of the said defendant, Merritt, to place said names on the roll of the senate, and it is pretended by the said conspirators that this device has the effect to make said defendants senators, and to place in their power, by mutually declaring themselves to be senators, to usurp the powers of that branch of the general assembly: that the same process and scheme is made and intended to be executed to accomplish an unlawful organization of the house of representatives; that if said defendants are permitted to so usurp the legislative functions, they will use their advantage and position so unlawfully obtained to deprive your orator of the office to which he is entitled, without observing any of the forms of law intended to protect your orator's rights, and without leaving in your orator's possession or within his reach the evidence upon which they have acted, and will deprive him of all opportunity to have canvassed and considered and applied to his benefit the ballots of persons of color that were cast for your orator, and afterward excluded from the count, as well as all of said votes unlawfully refused to be received in the ballot-boxes, on account of race, color, and previous condition of servitude of the said voters, the full benefit of which your orator is entitled.

Your orator shows unto your honors that the character and provisions of the law of the State of Louisiana, concerning the organization of the house and senate of the general assembly, make the secretary of state a very important and responsible officer, with great power to commit wrong, and thereby, if he be evilly disposed, as it were, to make and constitute a general assembly at his will: that for this reason the said defendant, H. C. Warmoth, in order that he may get his aid in this respect, for the purpose herein set forth, fraudulently pretends that the said Jack Wharton is secretary of state, and utterly ignores the right of the said defendant, Bovee, to discharge the duties of said office, although the said Bovee was lawfully elected thereto, and has never been impeached or lawfully deposed from said office.

And your orator further shows unto your honors that the said defendant, Warmoth, and his said co-conspirators, well knowing that their said scheme is fraudulent, despotic, and subversive of law and right, intend to carry the same out in all respects by force and fraud, if necessary; that the said defendants, the board of metropolitan police and the said A. S. Badger, although in duty bound to maintain law and order, have yet been the willing agent of wrong in the hands of the said

defendant, Warmoth, and, unless restrained by the order of this honorable court, will unlawfully aid the said defendants, in the accomplishment of said purpose, by force and violence.

And your orator further shows unto your honors that all of said actings and doings are contrary to equity and good conscience, and are conceived and intended to deprive your orator of his said office, and are contrary to, and are in violation of, the provisions, guarantees, and terms of the acts of Congress adopted to enforce the fourteenth and fifteenth amendments; and if said defendants are permitted to complete their said scheme, and unless the courts interpose to prevent the consummation thereof, your orator will be deprived of all the protection intended to be guaranteed by said acts of Congress.

Wherefore your orator humbly prays that your honors will grant unto him all just and proper relief in the premises; that you will allow and grant unto him the most gracious writ of injunction issued under the seal of this honorable court, directed to the said defendant, Henry C. Warmoth, enjoining and restraining him from in any manner, directly or indirectly, by himself or through any other officer of the State, city, or parish, or through any other person, from controlling or attempting to control, interfering with, or attempting to interfere with, the organization of either branch of the general assembly of the State of Louisiana, called to assemble on the 9th day of December, A. D. 1872, or that may be called to assemble at any future day, and from directly or indirectly, either by himself or any other person, preventing any person claiming to be a member of said general assembly from having full and free ingress and egress to and from the place, building, and room of that branch of said general assembly of which he may claim to be a member, or from issuing any written or oral order or instruction, request or direction, calculated or designed to directly or indirectly control or interfere with the organization of either of the branches of said general assembly, or calculated or designed to prevent any person from having free access thereto, and from doing any act, or from giving any order, direction, or making any request which may, directly or indirectly, prevent or hinder any person from being present or taking part in the organization of said senate, called to convene on the said 9th day of December, or at any future day, who may be returned as a member thereof by the board of returning-officers, composed of the said Henry C. Warmoth, George A. Bovee, James Longstreet, ——— Hawkins, and ——— Lynch, and whose name shall also be transmitted by the said George A. Bovee, secretary of state, to ——— Merritt, the secretary of the senate of the last general assembly, and placed by the said Merritt upon the roll of said senate, so to be convened, and from in any manner, directly or indirectly, aiding or abetting any person who is not so returned by said returning-board as a member of said senate, so to be convened, and whose name is not so transmitted as a member elected to said senate and is not so placed upon the roll of said senate, from participating in the organization of said senate, and from doing any act or from giving any order, direction, or making any request which may, directly or indirectly, prevent or hinder any person from being present and taking part in the organization of said house, called to convene on the said 9th day of December, or that may be called to convene at any future day, who may be returned as a member thereof by the board of returning-officers, composed of the said Henry C. Warmoth, George A. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose names shall also be transmitted by the said George A. Bovee, secretary of state, to Vigers, the secretary of the house of the last general assembly, and placed by

the said Vigers upon the roll of said house, so to be convened; and from in any manner, directly or indirectly, aiding or abetting any person who is not so returned by said returning-board as a member of said house, so to be convened, and whose name is not so transmitted as a member elected to said house, and is not placed upon the roll of said house, from participating in the organization of said house, except that the said Henry C. Warmoth is not hereby prohibited from participating in the canvass and return of the members elected to the said branch of said general assembly, so to be convened, provided he do the same in conjunction with and in the presence of said George A. Bovee, James Longstreet, ——— Hawkins, and ——— Lynch, but not otherwise; and that he further be enjoined and restrained from in any manner obstructing or hindering the said W. Vigers, clerk of the said house of representatives, or the said secretary of the senate, Charles H. Merritt, in the free and unobstructed discharge of their duties, or in full and complete obedience to the orders of the court, and from suspending, removing, them or either of them from office, or appointing or aiding or abetting any other person or persons to perform any act which, by law or the orders of the court, devolved on either the said Vigers, Merritt, or upon George E. Bovee, secretary of state, and from recognizing any validity in any act done or performed by any other person or persons pretending to act in the office or capacity of either of said officers; and that a writ of injunction may also issue, directed to A. S. Badger and chief of metropolitan police, and to each member of the board of metropolitan police, and to the board of metropolitan police, enjoining and restraining them and each of them from interfering in any manner with the organization of either branch of the general assembly to be convened on the 9th day of December, A. D. 1872, or at any time thereafter, except to preserve the peace, and to prevent no person from having access to either of the halls of said houses who is certified by George E. Bovee as being a member-elect of the same; and that writs of injunction also issue directed to the said E. Booth, A. Voorhies, A. J. Lewis, B. T. Jonas, I. B. Stamps, D. S. Cage, R. C. White, T. C. Anderson, J. M. Thompson, D. S. Weber, A. S. Herron, Robert Worrall, O. H. Brewster, E. M. Graham, J. W. McDonald, A. H. Leonard, J. C. Packett, James G. White, J. T. Kelly, enjoining and restraining them, and each of them, from participating in any manner in the organization of the senate to be convened on the 9th day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or about the organization of said senate, either by casting a vote, or otherwise, unless his name shall be and appear on the list of names of members of said senate, transmitted to the secretary of the same by George A. Bovee, secretary of state, having been elected thereto; and that a writ of injunction also issue to the said J. J. Mellon, James Timony, J. A. Shakspeare, J. A. Rice, and J. J. Finney, E. H. McCaleb, Charles Montaldo, W. B. Barrett, W. L. Stanford, Y. B. Blanchard, F. C. Zacharie, F. Fusilier, V. O. King, A. Gavidee, L. S. Rodriguez, John Barrow, John Delaney, William Stevens, W. C. Kinseller, C. Kummell, J. B. Eustis, J. McConnell, A. J. Dupont, E. L. Borrans, E. Riviere, P. Landry, C. A. Lewis, E. B. Cox, Numa Viras, T. J. Edwards, W. K. Johnson, T. L. Mills, and F. Bynum, J. S. Garderd, J. L. Lobdell, W. S. Cocheander, W. H. Scanlan, L. P. Sandidge, J. C. Moncure, George L. Smith, J. Sella Martin, W. H. Kankman, Thomas J. Humble, Paul Jones, George C. Bonhand, Cane Sartain, Allen J. Davis, W. F. Moreland, Thomas Price, David Young, George Washington, J. P. Elam, A. F. Stephenson, John Gair, James

Laws, James W. Armstead, F. W. Norris, J. H. Hadnox, L. A. Snack, J. R. Cavanagh, E. A. Kubin, William Kerr, C. W. Lowell, J. D. Traham, John S. Billim, O. Havang, T. G. Davidson, James R. McDowell, C. C. Davenport, E. S. Pierson, W. A. Ponder, W. T. Southard, D. Hill, H. Mahoney, J. P. Harris, L. B. Claiborne, L. Texadas, J. Swan, H. F. Vickens, J. F. Smith, R. N. Ducros, M. Hahn, D. K. Gorman, Henry Demas, Benjamin R. Ganth, J. F. Little, E. D. Estilette, L. D. Prescott, V. Rochon, L. A. Martinette, Thomas Castello, M. J. Foster, J. G. Tate, J. R. Stenant, J. S. Matthews, J. J. Booles, P. Fontilien, J. R. Smart, A. C. Bickham, J. P. Schultz, William A. Strong, enjoining and restraining them, and each of them, from participating in any manner in the organization of the house of representatives to be convened on the 9th day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or about the organization of the same, either by casting a vote or otherwise, unless his name shall be and appear on the list of names of members of said house, transmitted to the clerk of the same by George A. Bovee, secretary of state, as having been elected to the same.

And that a writ of injunction may also issue, directed to Charles H. Merritt, secretary of the senate of the last general assembly, enjoining and restraining him from placing, causing, or suffering to be placed upon the roll of the senate to be convened on the 9th December, A. D. 1872, or at any time thereafter, or from placing, causing, or suffering to be placed upon any list of members-elect to said last-mentioned senate, or from announcing, causing, or suffering to be announced as a member elected to said last-mentioned senate, or from recognizing, or causing, or suffering to be recognized as a member elected to said last-mentioned senate, or from in any manner designating, or causing, or suffering to be designated as a member of the said last-mentioned senate, prior or during the organization thereof, any person whose name shall not be transmitted to him by George A. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last-mentioned senate, and from in any manner acting upon any other list, except the one so transmitted by the said George A. Bovee, in the organization of the last-mentioned senate, and to disregard in said organization all other lists.

And that a writ of injunction may also issue, directed to William Vigers, clerk of the house of representatives of the last general assembly, enjoining and restraining him from placing, causing, or suffering to be placed upon the roll of the house of representatives to be convened on the 9th of December, A. D. 1862, or at any time thereafter, or from placing, causing, or suffering to be placed upon any list of members elected to said last-mentioned house, or from announcing, causing, or suffering to be announced as a member elected to said last-mentioned house of representatives, or from recognizing, causing, or suffering to be recognized as a member elected to said last-mentioned house of representatives, or from in any manner designating, or causing, or suffering to be designated as a member to the said last-mentioned house, prior or during the organization thereof, any person whose name shall not be transmitted to him by George A. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last-mentioned house of representatives, and from in any manner acting upon any other list, except the one so transmitted by the said George A. Bovee, in the organization of the last-mentioned house of representatives, and to disregard in said organization all other lists.

And that a writ of injunction also issue, directed to said George A.

Bovee, enjoining and restraining him from receiving any return or returns of the election of any State officers, or of the members of either branch of the general assembly of the State of Louisiana, excepting such returns as may be received by or filed in the office of him, as secretary of state, from the board of returning-officers, and a majority of the same, composed of Henry C. Warmoth, James Longstreet, and Jacob Hawkins, and John Lynch, and himself; and from delivering, causing, or suffering to be delivered to any speaker of the house of representatives any return, except received and filed as above stated, of any election whatever, or from making, or causing, or suffering to be made any list of names of the members elected to either branch of the general assembly, except from and according to returns so received and filed as above stated.

That a writ of injunction also issue, directed to the said Jack Wharton and Samuel Armstead, and each of them, enjoining and restraining them and each of them from receiving any returns of the elections held in the State of Louisiana, on the first Monday of November last past, for members of the general assembly, or from transmitting to William Vigers, the clerk of the house of representatives, or to Chas. H. Merritt, the secretary of the senate of the last general assembly, or to any other person, any list of names which is or purports to be a list of names of such persons as are the name of any person who, according to any returns, shall have been or shall be stated, or claimed, or assumed to have been elected to either branch of the general assembly called to convene on the 9th day of December, A. D. 1872, or that may be called to convene at any future time, or from making any statement or doing anything calculated or designed to furnish a basis for the organization of either of said branches of the said general assembly, or from delivering or interfering, conniving at or aiding, or suffering any other person to deliver to the speaker of the house of representatives, or any other person, any returns at any election whatever.

And that writs of injunction may also issue, directed to the said Thomas Isabelle, P. S. Wiltz, J. S. Taylor, J. E. Austin, and G. De Ferrier; also issue against the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, commanding them and each of them to refrain and desist from pretending to act together as a board of returning-officers, or as returning-officers of elections, from canvassing or attempting to canvass or consider any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election, and from attempting to make a canvass, declare, or publish any pretended deduction, calculation, statement, or proclamation based thereon, or pretended to be derived therefrom, in any way relating or pertaining to said election held on the 4th day of November, 1872, or certifying to any candidate for office at said election any certificate of election or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating, or destroying any document, paper, voucher, proof, statement of votes, or certificate relating to said election.

And may it further please your honors to, in the first instance, grant and allow said orders and writs of injunction herein prayed for *pendente lite*; and after due proceedings had, may it further please your honors to order and decree that all of said writs of injunction, as above herein prayed for, be made perpetual.

And your orator further shows unto your honors that he verily believes the actings and doings of the said defendants, as herein set forth

and complained of, are in all things unlawful, and are conceived and carried on by said defendants for the sole purpose of overthrowing and subverting the republican form of government guaranteed to the State of Louisiana by the Constitution of the United States. That said object is intended to be accomplished by depriving the said people of said State of the choice of its officers, by fraudulently disregarding the right of the duly-elected officers of said State of the right to administer the offices of said government, and substituting, by fraud and false certificates and evidences and canvass, persons who have never been elected to positions of trust and office in said State, and to confirm said pretended title to office by destruction of evidence of the actual vote cast at said election, and that your orator verily believes that unless your honors immediately allow, on the filing of this bill, a restraining order, restraining the said defendants, and each and every one of them, from doing the acts for which our orator herein prays they may be restrained, your orator fears that, before the hearing and determination of a motion for an injunction, the said defendants will have completed their unlawful scheme of fraud, and will have destroyed proof upon which your orator must rely to support his legal right to the seat of lieutenant-governor aforesaid, and your orator will be defeated thereby. Wherefore, your orator prays that your honors will grant and allow such restraining order, to the same range, effect, and extent as your orator has herein prayed; that said several defendants may be restrained and enjoined, and that the said order be maintained in full force until your honors shall have heard and determined a motion or rule on said defendants to show cause why the writs of injunction herein prayed for should not be allowed.

And may it also please your honors to order and adjudge that the said defendant, H. C. Warmoth, within a period of time to be fixed by your honors, to make and deposit in this honorable court, in the office of the clerk thereof, full, true, and exact sworn copies of each and every paper, document, affidavit, tally-sheet, list, sworn statement, or certificate, or letter which he may have received or may have come into his possession from any commissioner or commissioners, or any officer, concerned in the control or management of said election, or who had any duties to perform in connection therewith, and from all supervisors or assistant supervisors of election, in any manner relating to said election, in order that the same may be beyond the power of destruction by the said defendant, Warmoth, and his said confederates, and in order that the same may be saved to your orator as evidence, to enable him to establish his right to the office as aforesaid in any judicial proceedings which he may be compelled to institute in this court to establish and vindicate the same, and that the same may be also preserved for use or proof in support of your orator's bill in this behalf, and to establish his right to the relief by him herein and hereby prayed for; and that the said evidence, documents, &c., to be produced remain on file in this court, in order that the same may be preserved as evidence in any action which your orator may be required to institute in this court to establish his right to said office. And may it please your honors to grant unto your orator the most gracious writ of subpœna, under the seal of the honorable court, directed to each and every of said defendants named in the bill of complaint, commanding them, and each of them, to be and appear before your honors on some day certain, to be named in said writs, then and there to make full and complete answers to all and singular the premises, (your orator hereby moving answers under oath by said defendants,) and stand to and debate all such orders and decrees

as your honors shall deem fit to make in the premises. And that your honors grant unto your orator such other and further relief in the premises as to your honors may seem meet and just and as equity may require: and your orator will ever pray.

C. C. ANTOINE.
J. R. BECKWITH.

E. C. BILLINGS,
Counsel and Solicitor for Complainant.

DISTRICT OF LOUISIANA, *ss:*

C. C. Antoine, complainant in the foregoing bill of complaint, being first duly sworn, deposeth and saith that the allegations and matters stated and set forth in said bill of complaint are true as therein set forth, except as to such matters as are therein set forth upon information and belief, and that as to all such matters he verily believes the same to be true as therein stated.

C. C. ANTOINE.

Sworn to and subscribed before me this 7th day of December, A. D. 1872.

E. H. DURELL, *Judge.*

Circuit court of the United States in and for the district of Louisiana.

C. C. ANTOINE
vs.
H. C. WARMOTH ET ALS. } No. 6851—in equity.

Restraining order.—Issued December 7, 1872.

Whereas the plaintiff herein has this day filed and exhibited his bill of complaint against the said defendent H. C. Warmoth, and the other defendants named in said bill of complaint, and has therein prayed that injunctions, *pendente lite*, issue against the defendants therein, and that a restraining order be also issued restraining the said defendants as prayed for in said bill from doing or permitting to be done the acts in said bill complained of:

Now, therefore, on motion of J. R. Beckwith and E. C. Billings, solicitors for complainant, it is ordered that the defendants named in said bill do show cause on the 11th day of December, 1872, why injunctions, *pendente lite*, should not be allowed as prayed for. It is further ordered that said defendants each and every one of them be, and are hereby, commanded and restrained to the extent and effect as in said bill of complaint prayed [*the clerk will attach to this order a copy of the prayer for injunction as set forth in said bill of complaint*] until the hearing and determination of said rule for injunction, and until the further order of the court in the premises.

E. H. DURELL, *Judge.*

A true and correct copy of the original order on file in this cause.
F. A. WOOLFLEY, *Clerk.*

Wherefore your orator humbly prays that your honor will grant unto him all just and proper relief in the premises; that you will allow and grant unto him the most gracious writ of injunction issued under the

seal of this honorable court, directed to the said defendant, Henry C. Warmoth, enjoining and restraining him from in any manner, directly or indirectly, by himself or through any other officer of the State, city, or parish, or through any other person, from controlling or attempting to control, interfering with, or attempting to interfere with, the organization of either branch of this general assembly of the State of Louisiana, called to assemble on the 9th day of December, A. D. 1872, or that may be called to assemble at any future day, and from directly or indirectly, either by himself or through any other person, preventing any person claiming to be a member of said general assembly from having full and free ingress and egress to and from the place, building, and room of that branch of said general assembly of which he may claim to be a member, or from issuing any written or oral order or instruction, request or direction, calculated or designed to directly or indirectly control or interfere with the organization of either of the branches of said general assembly, or calculated or designed to prevent any person from having free access thereto, who claims to be a member thereof, and from doing any act, or from giving any order, direction, or making any request which may, directly or indirectly, prevent or hinder any person from being present and taking part in the organization of said senate, called to convene on the said 9th day of December, or at any future day, who may be returned as a member thereof by the board of returning-officers, composed of the said Henry C. Warmoth, George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose name shall also be transmitted by the said George E. Bovee, secretary of state, to Charles H. Merritt, the secretary of the senate of the last general assembly, and placed by the said Merritt upon the roll of said senate, so to be convened, and from in any manner, directly or indirectly, aiding or abetting any person who is not so returned by said returning-board as a member of said senate, so to be convened, and whose name is not so transmitted as a member elected to said senate, and is not so placed upon the roll of said senate, from participating in the organization of said senate, and from doing any act, or from giving any order, direction, or making any request which may directly or indirectly prevent or hinder any person from being present and taking part in the organization of said house, called to convene on the said 9th day of December, or that may be called to convene at any future day, who may be returned as a member thereof by the board of returning-officers composed of the said Henry C. Warmoth, George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, and whose name shall also be transmitted by the said George E. Bovee, secretary of state, to William Vigers, the secretary of the house of the last general assembly, and placed by the said William Vigers upon the roll of said house so to be convened, and from in any manner directly or indirectly aiding or abetting any person who is not so returned by said returning-board as a member of said house, so to be convened, and whose name is not so transmitted as a member elected to said house, and is not so placed upon the roll of said house, from participating in the organization of said house.

Except that the said Henry C. Warmoth is not hereby prohibited from participating in the canvass and return of the members elected to the said branches of said general assembly so to be convened, provided he do the same in conjunction with and in the presence of said George E. Bovee, James Longstreet, Jacob Hawkins, and John Lynch, but not otherwise. And that he further be enjoined and restrained from in any manner obstructing or hindering the said William Vigers, clerk of the house of representatives, or the said secretary of the senate, Charles H.

Merritt, in the free and unobstructed discharge of their duties, or in full and complete obedience to the orders of this court, and from suspending, removing them, or either of them from office, or appointing or ordering, or abetting any other person or persons to perform any act which by law or the orders of this court devolves on either the said Vigers, Merritt, or upon George E. Bovee, secretary of state, and from recognizing any validity in any act done or performed by any other person or persons pretending to act in the office or capacity of either of said officers.

And that a writ of injunction may also issue, directed to A. S. Badger, chief of metropolitan police, and to each member of the board of the metropolitan police, and to the board of metropolitan police, enjoining and restraining them and each of them from interfering in any manner with the organization of either branch of the general assembly to be convened on the 9th of December, A. D. 1872, or at any time thereafter, except to preserve the peace, and to prevent no person from having access to either of the halls of said houses who is certified by George E. Bovee as being a member-elect of the same.

And that writs of injunction also issue directed to the said E. Booth, A. Voorhies, A. J. Lewis, B. F. Jonas, T. B. Stamps, D. S. Cage, R. C. White, T. C. Anderson, J. M. Thompson, E. S. Weber, A. S. Herron, Robert Worrall, O. H. Brewster, E. M. Graham, J. W. McDonald, A. H. Leonard, C. J. C. Puckett, James G. White, J. F. Kelly, enjoining and restraining them and each of them from participating in any manner in the organization of the senate to be convened on the 9th day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or about the organization of said senate, either by casting a vote or otherwise, unless his name shall be and appear on the list of names of members of said senate transmitted to the secretary of the same by George E. Bovee, secretary of state, as having been elected thereto.

And that a writ of injunction also issue to the said J. J. Mellon and James Timony, J. A. Shakespeare, J. A. Rice, J. J. Finney, E. H. McCaleb, Chas. Montaldo, W. B. Barrett, W. L. Stanford, T. B. Blanchard, jr., F. C. Zacharie, F. Fusillier, V. O. King, A. Garidel, L. S. Roderiguez, John Barrow, John Delaney, Wm. Stevens, W. C. Kinsella, C. Kummell, J. B. Eustis, J. McConnell, A. J. Dumont, E. L. Bowers, E. Riviere, P. Landry, C. N. Lewis, E. B. Cox, Numa Vives, T. J. Edwards, W. K. Johnson, T. L. Mills, T. Bynum, J. S. Gardere, J. L. Lobdell, W. S. Cockernan, W. H. Scanlan, L. P. Sandidge, J. C. Moncure, Geo. L. Smith, J. Sella Martin, W. H. Kirkman, Thos. J. Humble, Paul Jones, Geo. C. Bonham, Cain Sartain, Allen J. Davis, W. F. Moreland, Thos. Price, David Young, George Washington, J. P. Elam, A. F. Stephenson, John Gair, Jas. Laws, James W. Armstead, F. W. Norris, J. H. Hadnot, L. A. Snaer, J. K. Cavannaugh, E. A. Hubin, Wm. Kern, C. W. Lowell, J. D. Trahan, John S. Billim, O. Harang, T. G. Davidson, James R. McDowell, C. C. Davenport, E. L. Pierson, W. A. Ponder, W. F. Southard, D. Hill, H. Mahoney, J. P. Harris, L. B. Claiborne, L. Texada, John J. Swan, J. G. P. Hooe, E. W. Dewees, H. F. Vickers, J. F. Smith, R. V. Dueros; M. Hahn; D. K. Gorman, Henry Demas, Benjamin R. Gantt, J. F. Little, E. D. Estilette, L. D. Prescott, V. Bochon, L. A. Martinet, James Costello, M. J. Foster, J. G. Tate, J. R. Stewart, J. S. Mathews, J. J. Booles, P. Fontelin; J. R. Smart, A. C. Bickham, J. P. Schultz, Wm. A. Strong, enjoining and restraining them and each of them from participating in any manner in the organization of the house of representatives, to be convened on the ninth day of December, A. D. 1872, or at any time thereafter, or from doing any act or thing toward, in, or

about the organization of the same, either by casting a vote or otherwise, unless his name shall be and appear on the list of names of members of said house transmitted to the clerk of the same by George E. Bovee, secretary of state, as having been elected to the same.

And that a writ of injunction may also issue, directed to Charles H. Merritt, secretary of the senate of the last general assembly, enjoining and restraining him from placing, causing, or suffering to be placed upon the roll of the senate to be convened on the ninth December, A. D. 1872, or at any time thereafter, or from placing, causing, or suffering to be placed upon any list of members-elect to said last-mentioned senate, or from announcing, causing, or suffering to be announced, as a member elected to said last-mentioned senate, or from recognizing, or causing, or suffering to be recognized, as a member elected to said last-mentioned senate, or from in any manner designating, or causing, or suffering to be designated as a member to the said last-mentioned senate, prior or during the organization thereof, any person whose name shall not be transmitted to him by George E. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last-mentioned senate, and from in any manner acting upon any other list except the one so transmitted by the said George E. Bovee, in the organization of the last-mentioned senate, and to disregard in said organization all other lists.

And that a writ of injunction may also issue directed to William Vigers, clerk of the house of representatives of the last general assembly, enjoining and restraining him from placing, causing, or suffering to be placed upon the roll of the house of representatives, to be convened on the ninth of December, A. D. 1872, or at any time thereafter, or from placing, causing, or suffering to be placed upon any list of members elected to said last-mentioned house, or from announcing, causing, or suffering to be announced as a member elected to said last-mentioned house of representatives, or from recognizing, or causing, or suffering to be recognized as a member elected to said last-mentioned house of representatives, or from in any manner designating, or causing, or suffering to be designated as a member to the said last-mentioned house prior or during the organization thereof any person whose name shall not be transmitted to him by George E. Bovee, the secretary of state, upon a list of the names of such persons as have been elected to the said last-mentioned house of representatives, and from in any manner acting upon any other list except the one so transmitted by the said George E. Bovee in the organization of the last-mentioned house of representatives, and to disregard in said organization all other lists.

And that a writ of injunction also issue directed to said George E. Bovee, enjoining and restraining him from receiving any return or returns of the election of any State officers or of the members of either branch of the general assembly of the State of Louisiana, excepting such returns as may be received by or filed in the office of him as secretary of state from the board of returning-officers, and a majority of the same, composed of Henry C. Warmoth, James Longstreet, and Jacob Hawkins, and John Lynch, and himself, and from delivering, causing, or suffering to be delivered to any speaker of the house of representatives any return except received and filed as above stated of any election whatever, or from making, or causing, or suffering to be made, any list of names of the members elected to either branch of the general assembly, except from and according to returns so received or filed, as above stated.

That a writ of injunction also issue directed to the said Jack Whar-

ton and Samuel Armstead and each of them, enjoining and restraining them and each of them from receiving any returns of the elections held in the State of Louisiana on the first Monday of November last past, for members of the general assembly, or from transmitting to William Vigers, the clerk of the house of representatives, or to Charles H. Merritt, the secretary of the senate of the last general assembly, or to any other person any list of names which is or purports to be a list of names of such persons, as on the name of any person who, according to any returns, shall have been, or shall be stated, or claimed, or assumed to have been elected to either branch of the general assembly, called to convene on the ninth day of December, A. D. 1872, or that may be called to convene at any future time, and from making any statement or doing anything calculated or designed to furnish a basis for the organization of either of said branches of the said general assembly, or from delivering or interfering, conniving at, or aiding, or suffering any other person to deliver to the speaker of the house of representatives, or any other person, any returns of any election whatever.

And that writs of injunction may also issue directed to the said Thomas Isabelle, P. S. Wiltz, J. S. Taylor, J. E. Austin, and G. de Ferriet; also issue against the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, commanding them and each of them to refrain and desist from pretending to act together as a board of returning-officers or as returning-officers of elections, from canvassing or attempting to canvass, or consider any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election, and from attempting to make a canvass, declare, or publish any pretended deduction, calculation, statement, or proclamation based thereon, or pretended to be derived therefrom, in any way relating or pertaining to said election, held on the fourth day of November, 1872, or certifying to any candidate for office at said election, any certificate of election, or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating, or destroying any document, paper, voucher, proof, statement of votes, or certificates relating to said election.

I hereby certify that the foregoing is a true and correct copy of the complainant's prayer for injunction in his bill of complaint in the cause of Cæsar C. Antoine *vs.* Henry C. Warmoth *et als.*, No. 6851 of the docket of the circuit court of the United States for the district of Louisiana, referred to and made a part of the subjoined restraining order.

[SEAL.] F. A. WOOLFLEY,
Clerk.

JANUARY 3, 1873.

United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, except entries from minutes of continuances, &c., in the case of C. C. Antoine *vs.* H. C. War-

moth *et als.*, No. 6851 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3d day of January, A. D. 1873.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Circuit court of the United States, fifth circuit and district of Louisiana.

WILLIAM P. KELLOGG *vs.* H. C. WARMOTH ET ALS. } In equity—No. 6830.

Bill of complaint.

DISTRICT OF LOUISIANA, *ss:*

To the judges of the circuit court of the United States for the district of Louisiana:

William Pitt Kellogg, of the city of New Orleans, a citizen of the State of Louisiana, brings this his bill against Henry C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, and John McHenry, all citizens of the State of Louisiana and inhabitants thereof, and against the New Orleans Republican Printing Company, a body-corporate duly created and chartered by the laws of the State of Louisiana, and domiciled therein, publishers of the New Orleans Republican, a newspaper, being the official journal of the State of Louisiana, of which company W. R. Fish is president, and thereupon your orator complains and says that in accordance with the constitution and laws of the State of Louisiana, a general election was held in said State, in all the parishes thereof, on the fourth day of November, in the year of our Lord 1872, at which election there were, by law, to be voted for and elected a governor and lieutenant-governor, as well as all officers in the executive, judicial, and legislative departments of the government of the State of Louisiana; that at said election your orator was duly nominated for and was a candidate for election by the suffrages of the lawful voters of said State, for the office of governor of said State; that at the same election the said defendant John McEnery was also a candidate for election to the same office; that, according to the law of the State of Louisiana governing and controlling said election, no person was a qualified elector, or entiled to vote at said election, until he had been registered in a list of persons entitled to vote at said election; that the provisions of the law of said State relating to registering, vested the appointment of the officers whose duty, by law, it was to register all such voters, in said Henry C. Warmoth; that at all times since your orator became a candidate for such election, the said Henry C. Warmoth, governor of said State, has repeatedly avowed his intention to adopt and use all the means in his power, and to so exercise unlawfully and extend his power and the power conferred upon him by his position as governor, as to unlawfully defeat the election of your orator; that, for that purpose, in the appointment of the supervisors of registration and the assistant supervisors of registration, he has so selected persons for the office of supervisors and assistant supervisors of registration as to obtain persons pliable to his will and who would concur with and aid him in the execution of his unlawful plans and

fraudulent devices: to that end and for that purpose, your orator is advised, informed, and verily believes the said Henry C. Warmoth did especially make it a condition-precedent to the appointment of such officers, that they should, in all things, and by all unlawful means within their power, assist in the accomplishment of said ends; and your orator further saith that one of the unlawful devices, plans, and schemes of the said defendant, Henry C. Warmoth, was, through the instrumentality of his said officers and with their aid, and by the pretended aid of laws of the State, to deprive a large number of the citizens of the State of Louisiana, in all respects lawfully entitled to the franchise, by refusing to register the said citizens upon the list of registered voters, by reason of their race, color, and previous condition; that in the execution and carrying out of said scheme, a large number of citizens of the State who are colored, and who had been in a former condition of servitude, were so refused registration on various frivolous and unlawful pretexts and pretenses, amounting, as your orator verily blieves, to at least ten thousand voters, (10,000;) that the said defendant, Henry C. Warmoth, adopted the means and devices aforesaid for the purpose of depriving said voters of their right of franchise as aforesaid, with intent thereby to prevent their ballots being cast for your orator, and thereby to defeat your orator's election to said office of governor; that afterward, and when said supervisors of registration had completed, as they pretended, the registration of the qualified electors of said State, and had succeeded in preventing the registration of a large number of electors as aforesaid, and on the day of election, when said persons so refused registration as aforesaid offered to deposit their ballots for your orator in the ballot-boxes at the places of election, they were also refused the right to deposit said ballots, to the injury of your orator; that your orator is in possession of evidence to that fact, preserved under the provisions of an act of Congress, approved May 31, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes," and the acts amendatory thereto. Your orator herewith exhibits and files the said certificates and affidavits, with the ballots thereto attached, marked 1, 2, 3, 4, and avers that he is informed, and believes, that there are in evidence from three to five thousand documents of the same character that have been in the same manner preserved, with the ballots attached to said affidavit and certificates in which your orator was included by name as candidate for the office of governor of the State of Louisiana, and that the persons so offering to deposit said ballots were, in each and every instance, persons of color, and were refused the right of franchise on account of race and color.

Your orator, further complaining, shows unto your honors that he has reason to believe, and verily does believe, and therefore avers, that the said defendant, Henry C. Warmoth, combining and conspiring with the supervisors and assistant supervisors of registration, by him so appointed as aforesaid, has caused a dishonest, incorrect, and false count of the votes cast in the several parishes of said State at said election, and has falsified and caused false and untrue returns and certificates of the result and canvass of the votes cast in the several parishes in said State at said election, and that said count, convass, and certificates are so false and untrue for the reason that a large number of the ballots deposited in the ballot-boxes at said election by persons of color have not been counted and considered, the evidence thereof preserved and certified so that the same may be canvassed and considered by the returning-officers for elections in said State, and that he

verily believes that the votes and ballots so suppressed were cast for and in favor of your orator as governor of said State, and in all things sufficient to have elected him to said office.

And your orator, further complaining, shows unto your honors that, by the law of the State of Louisiana governing elections, it is made the duty of the supervisors or assistant supervisors of registration for the various parishes in said State, to immediately, upon the close of the polls on the day of election, and after the ballot-boxes had been by the commissioners of election returned in due form of law to the supervisor of registration, to proceed, in the presence of the commissioners of election and three freeholders of the parish for each poll or voting-place therein, to open the ballot-box and count the ballots therein and make a list of all the names of the persons and officers voted for, the number of votes for each person, the number of ballots in the box, the number of ballots rejected, and the reason therefor; that such statement is required to be made in triplicate, and each copy thereof signed and sworn to by the commissioners of election of the poll and by the supervisor of registration; that it is the further duty of said supervisor to inclose in an envelope of strong paper or cloth, securely sealed, one copy of such statement from each poll, and one copy of the list of persons voting at such poll, and all memoranda and tally-lists used in making the count and statement of the votes, and send such package by mail, plainly and properly addressed, the said defendant, Henry C. Warmoth, governor of the State.

And your orator, further complaining, shows unto your honors that the law of the said State provides that the governor, lieutenant-governor, secretary of state, and John Lynch, and T. C. Anderson, or a majority of them, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections; that in case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy should be filled by the residue of the board of returning-officers; that said law further provides that within ten days after the closing of the election said returning-officers shall meet in New Orleans to canvass and compile the statement of votes made by the supervisors of registration, and make returns of the election to the secretary of state, and they shall continue in session until such returns shall have been completed; that the governor shall, at such meeting, open, in the presence of said returning-officers, the statements of the supervisors of registration, and that the returning-officers shall, from such statements, canvass and compile the returns of the election in duplicate; that one copy of such return shall be filed in the office of the secretary of state of said State, and of one copy they shall make public proclamation by printing in the official journal, and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been lawfully elected; the returns of the elections thus made and promulgated are, by said State law, declared to be *prima facie* evidence in all courts of justice, and before all civil officers, of the right of any person named therein, to hold and exercise the office to which he shall by such returns be declared elected.

And your orator further shows that, by the law of said State, the said board of returning-officers are vested with full and competent authority and jurisdiction to examine into the truthfulness of any such statement, certificate, or return, to hear testimony, require the production of papers, and to investigate into the fairness of the election in any of the several

parishes, polls, or election precincts in said State, and to determine whether persons who were by law lawfully entitled to vote at such election were deprived of or refused the right of franchise by reason of race, color, or previous condition, or otherwise; and if it appear that a sufficient number of the qualified electors entitled to vote at any poll or voting-place were refused the right of franchise unlawfully, so as materially to change the result of the election, said returning-officers are prohibited from canvassing or compiling the statement of votes of such poll or voting-place in their return, but are required to exclude it therefrom.

Your orator, further complaining, shows unto your honors that ten days after said election and at the time when said returning-board was by law required to meet, the same did so meet; that the defendant, Henry C. Warmoth, as governor of this State, was present at such meeting; that P. B. S. Pinchback, lieutenant-governor; Francis J. Herron, secretary of state, and John Lynch were also present, constituting a majority of said board; that it was then and there determined that said P. B. S. Pinchback and T. C. Anderson, being candidates for office at said election and interested therein, were disqualified from acting on said board, thereby reducing the members of said board present to the said defendant, Warmoth, the said Francis J. Herron, and the said John Lynch, who still constituted a majority of said board; the said board then proceeded by authority of law to fill said vacancies in said board and filled the same by the election of Jacob Hawkins and James Longstreet; the said board was thereupon properly organized to proceed to said canvass and were duly sworn according to law.

And your orator further shows that said defendant, Henry C. Warmoth, pretending to be in possession of the returns of a large number of supervisors of registration, refused to open said statements of the supervisors of registration in the presence of said returning-officers, being influenced in such refusal, as your orator verily believes, by the fear that said returning-board would make due and proper investigation of the truthfulness of said returns and statements, and that said scheme for excluding lawful ballots would be defeated, or that evidence of the frauds that had been so committed, and of the fact that a large number of persons had at such election offered to vote and had been denied the right to vote, contrary to the Constitution and acts of Congress, would be discovered and preserved in such form that the same could be used and of avail in any action or proceeding instituted by your orator to determine his right to the office of governor of said State, but the said Henry C. Warmoth made frivolous excuses for not discharging his said duty, and said board of returning-officers adjourned until the next day without any further action, when, in order to cover up and conceal said frauds and to prevent the proper legal canvass of said votes, the said defendant Henry C. Wormoth, without any legal authority or color of law, pretended to eject the said Francis J. Herron from the office of secretary of state, and with force and arms attempted to take forcible possession of the records and archives of the office of secretary of state into his custody, and without warrant or color of law pretended to appoint the said defendant, Jack Wharton, to the office of secretary of state, and that the said Jack Wharton, willing to aid in the said unlawful scheme, pretended to be secretary of state, and, as such, a member of said returning-board; that said defendant, Henry C. Warmoth, thereupon pretending that he had conferred the office of secretary of state on said Wharton, combined with said Wharton, and they together pretended to have elected as members of said returning-board the said defendants Frank H. Hatch and Durant Da Ponte, and that although

they and all of them were well aware that all said actings and doings were in all respects fraudulent and in violation of law, and that none of the said defendants except the said defendant Warmoth had any colorable right to proceed to the canvass of said statements, certificates, or returns, and that he, the said Warmoth, had no right to open or submit the same to any persons other than the said Lynch, Hawkins, Longstreet, and Herron, yet the said defendants Warmoth, Wharton, Hatch, and Da Ponte, in order to aid in such scheme of fraud, pretended to be a lawful returning-board; that the said defendant Warmoth, as your orator is informed and verily believes, while refusing to open and deliver said statements, certificates, and returns to said legal returning-officers, who were organized and in actual session, has in fact opened and submitted the same to said conspirators and intruders, excluding said lawful returning-officers from any canvass; that your orator believes, and therefore avers, the fact to be that it is the intention and deliberate plan of the said defendants aforesaid, pretending to act as returning-board as aforesaid, to make such pretended canvass of said votes as shall effect an apparent defeat of your orator and declare the said McEnery elected as governor of said State; that to produce said result they will give effect to all such fraudulent certificates and returns as tend to produce such an effect and tend to exclude from all consideration, count, or canvass, all votes of persons of color that have been suppressed or prevented from being cast, and that it is their intention by such frauds to deliver to the pretended secretary of state such certificate or return, or pretended result of their canvass, as will make it appear that your orator is defeated, and the said McEnery elected; and that while their canvass or return, as your orator is informed, would be perfectly void in law, yet the same would embarrass, hinder, and delay him in the prosecution of legal proceedings in this honorable court, to establish his rights to said office, to which he verily believes he is justly entitled and to which he has been legally elected; that he is informed and fears that it is the intention of the said pretended returning-board, also in furtherence of their said scheme, to destroy all of said returns or certificates received from supervisors of registration, and thereby suppress and place beyond the reach of your orator evidence which will be important and indispensable in a prosecution of legal proceedings to establish his right to said office; that he verily believes that it is the intention of the said defendant, Warmoth, to place all said certificates and returns of supervisors beyond the reach of the regularly constituted board of returning-officers, and thereby deprive your orator of any legal official canvass of said votes and of the evidence that a just, honest, and truthful canvass of said votes would furnish, tending to show his right to said office of governor.

And further complaining, your orator shows unto your honors that he is further informed and verily believes that the said defendant, McEnery, is fully cognizant of said plans and schemes, and approves the same, and is willing to aid in its accomplishment by pretending to believe that the result of such pretended canvass, if thereby it is made to appear that he has received a majority of the votes cast at said election, would confer on him the right to said office, and that your orator verily believes that it is the intention of said defendants to make a sham and fraudulent return and count, declaring the said McEnery elected, and publish the same in the official journal of said State, the New Orleans Republican, printed and issued by said defendant the New Orleans Republican Printing Company.

And your orator, further complaining, shows unto your honors that

all the said actings and doings are contrary to equity and good conscience; that your orator is entitled to the benefit of a canvass, by the legally constituted board of returning-officers, and that unless said legal returning-officers are permitted to act before said returns, statements, and certificates of the supervisor of registration are destroyed, or placed beyond the reach of said legal board of returning-officers, evidence necessary and important to your orator, and indispensable as proof of his right to said office, would be placed beyond his reach, and he will be deprived of his election to the office of governor of said State, by reason of the denial to citizens of the State who have offered to vote for your orator at said election of the right to vote on account of their race, color, or previous condition, and of his inability to prove the said fact.

And your orator, further complaining, shows unto your honors that he has reason to fear, and does fear, that the said defendants, pretending in the unwarranted manner aforesaid to act as a board of returning-officers, will mutilate, alter, and change said certificates in the furtherance of their plan of fraud, and that the original certificates, returns, and statements of the supervisors of registration are important and necessary, and should be preserved in order to determine whether the same have been changed, altered, or tampered with, or suppressed, or considered, and in order that his right to said office of governor may not be impaired and, by the destruction of evidence, rendered impossible to be asserted by the proper action when the time for the institution of such action shall arrive.

And your orator, further complaining, shows that, by the means aforesaid and in the manner aforesaid, the said Henry C. Warmoth, governor of said State, by wholly and totally disregarding the laws thereof, and in defiance of law and with the intent to destroy and overthrow a republican form of government in said State, has in fact directed the whole machinery of the State, and all of the officers therein under his control, with the purpose and intent of defeating a just and fair election and an honest and true return thereof, in order to defeat your orator, well knowing that your orator, if a just and fair election had been had and held, and a true, honest, and fair canvass of the votes cast at such election made, was legally elected to the office of governor of said State; and the said Warmoth has endeavored and is endeavoring, with the aid of all of said defendants, to suppress and destroy all evidence of such fraud so completely that the same may be of no avail to your orator in asserting his right to said office; that, unless the said defendants are restrained by the order of this honorable court, and are permitted to continue in said unlawful acts, your orator fears that his means of legally establishing his right to said office of governor will be placed beyond his reach and control long before the time when by law he can commence the proper judicial proceedings to determine and enforce his title and right to said office.

Wherefore your orator humbly prays that your honors will grant unto him all just and proper relief in the premises; that you will allow and grant unto him the most gracious writ of injunction, issued under the seal of this honorable court, directed to the said defendant, Henry C. Warmoth, enjoining and restraining him from, in any manner, either directly or indirectly, pretending to consider or canvass any certificate, statement, or return of any supervisor of registration, except in the presence of said legal returning-officers, John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron, and further commanding him, the said H. C. Warmoth, to desist and refrain from submitting to

the said defendants, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, or any or either of them, either as pretended members of any board of returning-officers of elections or as individuals, any such statements, certificates, or returns, and further enjoining and commanding him, the said H. C. Warmoth, to desist from assisting, aiding, abetting, or permitting any other person or persons whatsoever other than said Lynch, Hawkins, Longstreet, and Herron, or their duly-qualified successors, as returning-officers to inspect, consider, or have custody of or access to said statements, certificates, or returns of said supervisors of registration, or any other paper, document, affidavit, or proof that may have come into the hands of the said H. C. Warmoth, or shall hereafter come into his hands, relating to said election or to the fairness or correctness thereof, and which by law it is his duty to submit to the said legal board of returning-officers of elections, and which should be properly considered by them; and that a writ of injunction also issue against the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, commanding them and each of them to refrain and desist from pretending to act together as a board of returning-officers, or, as returning-officers of elections, from canvassing or attempting to canvass or consider any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election, and from attempting to make a canvass, declare or publish any pretended deduction, calculation, statement, or proclamation based thereon, or pretended to be derived therefrom, in any way relating or pertaining to said election, held on the 4th day of November, 1872, or certifying to any candidate for office at said election, any certificate of election, or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating or destroying any document, paper, voucher, proof, statement of votes, or certificates relating to said election.

That a writ of injunction may also in like manner issue, directed to the said John McEnery, restraining and inhibiting him from, in any manner, acting or pretending to act as governor of said State, and from making any pretension or asserting any claim to the office of governor of said State by virtue of any pretended evidence of election thereto under or by virtue of any certificate, document, or count, canvass, or adjudication now or hereafter made by the said defendant, H. C. Warmoth, and the said defendants in this bill, charged to be unlawfully combined and conspired as returning-officers, that is to say, the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, or either of them.

And may it further please your honors to grant and allow also a writ of injunction, in like manner directed to the said New Orleans Republican Printing Company, under whose control and direction the newspaper called the New Orleans Republican, the official journal of the said State, whereof the said defendant W. R. Fish is president, enjoining and restraining the said printing company from in any manner publishing any official notice, statement, or document relating to any canvass or statement of votes made or pretending to be made or in any manner emanating from the said H. C. Warmoth and said Jack Wharton, Frank H. Hatch, Durant Da Ponte, or either of them, as a pretending returning board or returning-officers of election in any manner relating to the said election held on the said 4th of November, A. D. 1872.

And it may further please your honors to, in the first instance, grant and allow said orders and writs of injunction herein prayed for *pendente lite*: and after due proceedings had, may it further please your honors.

to order and decree that all of said writs of injunction, as above herein prayed for, be made perpetual.

And your orator further shows unto your honors that he verily believes the actings and doings of the said defendants, as herein set forth and complained of are in all things unlawful, and are conceived and carried on by said defendants for the sole purpose of overthrowing and subverting the republican form of government guaranteed to the State of Louisiana by the Constitution of the United States; that said object is intended to be accomplished by depriving the said people of said State of the choice of its officers by fraudulently disregarding the right of the duly-elected officers of said State of the right to administer the offices of said government, and substituting, by fraud and false certificates and evidences and canvass, persons who have never been elected to positions of trust and office in said State, and to confirm said pretended title to office by destruction of evidence of the actual vote cast at said election, and that your orator verily believes that, unless your honors immediately allow, on the filing of this bill, a restraining order, restraining the said defendants, and each and every one of them, from doing the acts for which your orator herein prays they may be restrained, your orator fears that, before the hearing and determination of a motion for an injuncion, the said defendants will have completed their unlawful scheme of fraud, and will have destroyed proof upon which your orator must rely to support his legal right to the office of governor as aforesaid, and your orator will be defeated thereby.

Wherefore your orator prays that your honors will grant and allow such restraining order to the same range, effect, and extent as your orator has herein prayed; that said several defendants may be restrained and enjoined, and that the said order be maintained in full force until your honors shall have heard and determined a motion or rule on said defendants to show cause why the writs of injunction herein prayed for should not be allowed.

And may it also please your honors to order and adjudge that the said defendant, H. C. Warmoth, within a period of time to be fixed by your honors, do make and deposit in this honorable court, in the office of the clerk thereof, full, true, and exact sworn copies of each and every paper, document, affidavit, tally-sheet, list, sworn statement, or certificate, or letter which he may have received or may have come into his possession from any commissioner or commissioners, or any officer concerned in the control or management of said election, or who had any duties to perform in connection therewith, and from all supervisors or assistant supervisors of election, in any manner relating to said election, in order that the same may be beyond the power of destruction by the said defendant, Warmoth, and his said confederates, and in order that the same may be saved to your orator as evidence, to enable him to establish his right to the office of governor, as aforesaid, in any judicial proceedings which he may be compelled to institute in this court to establish and vindicate the same; and that the same may be also preserved for use or proof in support of your orator's bill in this behalf, and to establish his right to the relief by him herein and hereby prayed for, and that the said evidence, documents, &c., to be produced, remain on file in this court, in order that the same may be preserved as evidence in any action which your orator may be required to institute in this court to establish his said right to said office.

And may it also please your honors to grant unto your orator the most gracious writ of subpœna, under the seal of this honorable court,

directed to the said defendants, Henry C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, John McEnery, and the said New Orleans Republican Printing Company, to be served on the said W. R. Fish, president thereof, commanding them and each of them to be and appear before your honors, on some day certain to be named in said writs, then and there to make full, true, and complete answers to all and singular the premises, and stand to and abide all such orders and decrees as your honors would deem fit, proper, and just in the premises. And that your honors grant unto your orator such other and further relief in the premises as to your honors may seem meet and just, and as equity may require; and your orator will will ever pray.

WM. P. KELLOGG.

J. R. BECKWITH,
Counsel and Solicitor for Complainant.

DISTRICT OF LOUISIANA, *ss:*

William Pitt Kellogg, being first duly sworn, deposeth that he is the complainant named in the foregoing bill of complaint; that he knows the contents thereof; that the allegations therein contained are true, as he verily believes, except as to such allegations as are therein set forth upon his information and belief, and as to all such allegations he verily believes the same to be true.

WM. P. KELLOGG.

Sworn to and subscribed before me November 16, 1872.

F. A. WOOLFLEY,
United States Commissioner.

Order.

Let this bill be filed.

E. H. DURELL, *Judge.*

NOVEMBER 16, 1872.

Order.

Let the defendants herein be cited to show cause on the 19th instant, at 11 a. m., before this court, why injunctions *pendente lite* should not be issued, as prayed for in complainant's bill of complaint; and in the mean time, and until the further orders of this court, let the restraining orders prayed for in said bill of complaint issue against said defendants in form and to the effect prayed for in said bill of complaint.

E. H. DURELL, *Judge.*

NOVEMBER 16, 1872.

Marshal's return of service.

Received November 16, 1872, by the United States marshal, and on the same day served copies of the within order, as follows: On H. C. Warmoth, by handing the same to him in person at the Saint Charles Hotel in this city; on Durant Da Ponte, at the same time and place, and in like manner; on John McEnery, by handing to him at Moreau's restaurant in this city; on the New Orleans Republican Printing Company, by handing the same to W. R. Fish, the president of said company, at

his office on Camp street, near Poydras; on Jack Wharton, by handing to him, in person, at the Saint Charles Hotel; and on the eighteenth day, same month and year, served copy on F. H. Hatch, by handing the same to him in person, at his office, 33 Carondelet street.

T. W. DEKLYNE,
Deputy United States Marshal.

Restraining order.

United States of America, circuit court of the United States, fifth circuit and district of Louisiana, November term, A. D. 1872.

NEW ORLEANS, *Saturday, November* 16, 1872.

Court met pursuant to adjournment; present, the Hon. E. H. Durell, district judge.

WILLIAM P. KELLOGG
vs.
H. C. WARMOTH ET ALS. } No. 6830.

On motion of J. R. Beckwith, counsel and solicitor for complainant, it is ordered that H. C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, John McEnery, and the New Orleans Republican Printing Company, publishers of the New Orleans Republican, a newspaper, being the official journal of the State of Louisiana, be enjoined and restrained from in any manner, either directly or indirectly, pretending to consider or canvass any certificate, statement, or return of any supervisor of registration except in the presence of the legal returning officers named in the bill of complaint filed this day, to wit: John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron; and it is further ordered that the said H. C. Warmoth desist and refrain from submitting to the defendants, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, or any or either of them, either as pretended members of any board of returning officers of elections of the State of Louisiana, or as individuals, any statements, certificates of returns, or pretended statements, certificates, or returns of election, and to desist from assisting, aiding, abetting, or permitting any other person or persons whatsoever, other than John Lynch, Jacob Hawkins, James Longstreet, and Francis S. Herron, or their duly-qualified successors, as returning-officers, to inspect, consider, or have custody of or access to said statements, certificates, or returns of said supervisors of registration, or any other paper, document, affidavit, or proof that may have come into the hands of said Warmoth, or shall hereafter come into his hands, relating to said election, or to the fairness or correctness thereof, and which, by law, it is his duty to submit to the said John Lynch, Jacob Hawkins, James Longstreet, and Francis J. Herron, the said legal board of returning-officers of elections, and which should be properly considered by them.

And be it further ordered that the said H. C. Warmoth, Jack Wharton, Frank H. Hatch, and Durant Da Ponte, and each of them, be commanded and enjoined to refrain and desist from pretending to act together as a board of returning-officers or as returning-officers of elections, from canvassing, or attempting to canvass, or consider any certificate, document, affidavit, return, statement of votes, or any paper whatsoever properly relating to said election, mentioned in the said bill of complaint, and from attempting to make a canvass, to make, declare, or publish any pretended deduction, calculation, statement, or proclama-

tion based thereon, or pretended to be derived therefrom in any way relating or pertaining to said election, mentioned in the said bill of complaint, held on the 4th day of November, 1872, or certifying to any candidate for office at said election any certificate of election or any statement of the result of said election tending to show any right to office in any person growing out of ballots cast at said election, and from meddling with, altering, suppressing, falsifying, obliterating, or destroying any document, paper, voucher, proof, statement of votes, or certificate relating to said election.

And it is further ordered that the said John McEnery be commanded, enjoined, restrained, and inhibited from in any manner acting or pretending to act as governor of the State of Louisiana, and from making any pretensions or asserting any claim to the office of governor of said State by virtue of any pretended evidence of election thereto under or by virtue of any certificate, document, or count, canvass, or adjudication, now or hereafter made by the said defendant, H. C. Warmoth, and the said defendants, Jack Wharton, Frank H. Hatch, Durant Da Ponte, in this bill charged to be unlawfully combined and conspired as returning-officers.

And it is further ordered that the said New Orleans Republican Printing Company, under whose control and direction the newspaper called the New Orleans Republican, the official journal of the State of Louisiana, is published, whereof W. R. Fish is president, be enjoined and restrained from in any manner publishing any official notice, document, or statement relating to any canvass or statement of votes made or pretended to be made, or in any manner emanating from the said H. C. Warmoth and said Jack Wharton, Frank H. Hatch, Durant Da Ponte, or either of them, as a pretended board of returning-officers of elections, in any manner relating to the said election held on the 4th day of November, A. D. 1872.

And it is further ordered that the said defendants, H. C. Warmoth, Jack Wharton, Frank H. Hatch, Durant Da Ponte, John McEnery, and the New Orleans Republican Printing Company, named in the bill of complaint this day filed, be so commanded, enjoined, and restrained until the further order of this honorable court.

Marshal's return of service.

Received, November 17, 1872, by the United States marshal; and on the same day served copies of the within order as follows: On H. C. Warmoth, by handing the same to him, in person, at the Saint Charles Hotel in this city; on Durant Da Ponte, at the same time and place, and in like manner; on John McEnery, by handing to him at Moreau's restaurant in this city; on the New Orleans Republican Printing Company, by handing the same to W. R. Fish, the president of said company, at his office on Camp street, near Poydras; on Jack Wharton, by handing to him in person at the Saint Charles Hotel; and on the eighteenth day of the same month and year, served copy on F. H. Hatch, by handing the same to him in person, at his office, 33 Carondelet street.

T. W. DEKLYNE,
Deputy United States Marshal.

Motion to show cause for contempt of orders of court.

Entered and filed November 19, 1872.

Circuit court of the United States, district of Louisiana.

WM. P. KELLOGG
vs.
H. C. WARMOTH. } No. 6830.

On motion of J. R. Beckwith and William H. Hunt, solicitors for complainant, and on suggesting to the court that the said defendants, H. C. Warmoth, Jack Wharton, Durant Da Ponte, and Frank H. Hatch, are and have been acting in contempt of orders of this court in this case, and in disobedience thereof, it is ordered that the said defendants above named do show cause on Friday, the 22d of November next, 1872, why they should not be punished for contempt of court, and that the complainant have leave to file interrogatories addressed to said defendants, and each of them, touching any disobedience of the orders of this court heretofore made in this cause, and that the said defendants be required to answer such interrogatories in writing, under oath, before touching any other proceedings in this cause.

Marshal's return of service.

Received, November 20, 1872, by the United States marshal; and on the same day, month, and year served a copy thereof on Henry C. Warmoth, Jack Wharton, and Durant Da Ponte, by handing the same to them, in person, in this city.

CHARLES R. STEELE,
Deputy United States Marshal.

NOVEMBER 20, 1872.

I also served Frank H. Hatch with a copy hereof, on the 20th of November, 1872, personally.

C. R. STEELE,
Deputy United States Marshal.

NOVEMBER 21, 1872.

Affidavit of W. P. Kellogg.

Filed November 19, 1872.

Circuit court of the United States, district of Louisiana.

W. P. KELLOGG
vs.
H. C. WARMOTH ET ALS. } In equity.

William P. Kellogg, being first duly sworn, deposeth and saith that he is advised and informed, and thereby believes, that the said defendants, H. C. Warmoth, Durant Da Ponte, Jack Wharton, and Frank H. Hatch, are now and at all times since the making and service of the restraining order, issued in this cause, have been acting in disregard and in disobedience thereof, in contempt of the lawful orders of this court,

and have aided, abetted, and countenanced the continued possession, custody, and canvass of the returns, certificates of officers, connected with said elections by persons other than the said Lynch, Longstreet, Herron, and Hawkins, and have in other material respects disobeyed the orders of this honorable court.

WM. P. KELLOGG.

Sworn to and subscribed before me this 19th November, 1872.

J. W. GURLEY,
United States Commissioner.

Affidavits of C. C. Antoine and others, offered in evidence, November 25, 1872.

UNITED STATES OF AMERICA, *State of Louisiana, ss:*

This day personally appeared before me, the undersigned, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, C. C. Antoine, who, being duly sworn, deposes and says that he is a citizen of the United States, a resident and legal voter in the parish of Caddo, in said State of Louisiana; that he was in the parish of Caddo at a general election held on the 4th day of November, 1872, as State officers and electors for President and Vice-President and members of Congress was voted for, and knows from his own knowledge and from reliable information received from others, which he believes true, that more than five hundred colored voters, legally qualified to vote in said parish, were denied the right to vote, and were prevented from voting on account of their color and previous condition of servitude.

C. C. ANTOINE.

Sworn to and subscribed before me, November 18, 1872.

F. A. WOOLFLEY,
United States Commissioner.

UNITED STATES OF AMERICA, *State of Louisiana, ss:*

This day personally appeared before me, the undersigned, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, Joseph B. Lott, a citizen of the United States, and a legally qualified voter of the parish of Rapides, in the State of Louisiana; and that he was in said parish in the months of September, October, and up to the —— day of November, 1872; that he is well acquainted with the voters of said parish; that he attended various places appointed to register voters in said parish in the months of September and October, 1872, and he knows from his own knowledge, and from information received from various sources, that he verily believes true, that the registrar of voters of said parish refused, and knowingly omitted, to register a large number of colored persons legally qualified to register and vote in said parish, to wit: fifteen hundred, on account of their color and former condition of servitude, and that numbers of persons were by the wrongful and illegal acts aforesaid of said registrar, deprived and denied the right of voting.

JOSEPH B. LOTT.

Sworn to and subscribed before me, November 18, 1872.

F. A. WOOLFLEY,
United States Commissioner.

UNITED STATES OF AMERICA, *State of Louisiana, ss:*

This day personally appeared before me, the undersigned, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, George Y. Kelso, a citizen of the United States, and a legally qualified voter of the parish of Rapides, in the State of Louisiana, and that he was in said parish in the months of September, October, and up to the —— day of November, 1872; that he is well acquainted with the voters of said parish; that he attended various places appointed to register voters in said parish in the months of September and October, 1872, and he knows from his own knowledge, and from information received from various sources, that he verily believes true, that the registrar of voters of said parish refused and knowingly omitted to register a large number of colored persons legally qualified to register and vote in said parish, to wit: fifteen hundred, on account of their color and former condition of servitude, and that numbers of persons were, by the wrongful and illegal acts aforesaid of said registrar, deprived and denied the right of voting.

GEORGE Y. KELSO.

Sworn to and subscribed before me November 18, 1872.

F. A. WOOLFLEY,
United States Commissioner.

UNITED STATES OF AMERICA, *State of Louisiana, ss:*

This day, personally appeared before me, the undersigned, clerk of the circuit court of the United States for the fifth circuit district of Louisiana, Joseph Conaughton, a citizen of the United States, and a legal qualified voter of the parish of Rapides, in the State of Louisiana; and that he was in said parish in the month of September, October, and up to the —— day of November, 1872; that he is well acquainted with the voters of said parish; that he attended various places appointed to register voters in said parish, in the months of September and October, 1872, and he knows from his own knowledge, and from information received from various sources that he verily believes true, that the registrar of voters of said parish refused, and knowingly omitted, to register a large number of colored persons legally qualified to register and vote in said parish, to wit, fifteen hundred, on account of their color and former condition of servitude; and that numbers of persons were, by the wrongful and illegal acts aforesaid of said registrar, deprived and denied the right of voting.

JOSEPH CONAUGHTON.

Sworn to and subscribed before me November 18, 1872.

F. A. WOOLFLEY,
United States Commissioner.

UNITED STATES OF AMERICA, *State of Louisiana, ss:*

This day personally appeared before me, the undersigned, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, Harry Lott, a citizen of the United States, and a legal qualified voter of the parish of Rapides, in the State of Louisiana; and that he was in said parish in the month of September, October, and up

to the —— day of November, 1872; that he is well acquainted with the voters of said parish; that he attended various places appointed to register voters in said parish, in the months of September and October, 1872, and he knows from his own knowledge, and from information received from various sources that he verily believes true, that the registrar of voters of said parish refused, and knowingly omitted, to register a large number of colored persons legally qualified to register and vote in said parish, to wit, fifteen hundred, on account of their color and former condition of servitude; and that numbers of persons were, by the wrongful and illegal acts aforesaid of said registrar, prevented and denied the right of voting.

HARRY LOTT.

Sworn to and subscribed before me November 18, 1872.

F. A. WOOLFLEY,
United States Commissioner.

DOCUMENTS

Filed by complainant November 19, 1872.

Minutes of proceedings of board of returning-officers, State of Louisiana, general election of 1872.

FIRST DAY.

NEW ORLEANS, *November* 12, 1872.

Board met in the governor's office, Mechanics' Institute.

Present: Governor H. C. Warmoth, Lieutenant-Governor P. B. S. Pinchback, Secretary of State F. J. Herron, and John Lynch. Absent: T. C. Anderson.

No judge being present to administer the required oath to the members of the board, after effecting an organization by appointing Governor Warmoth chairman, and John Lynch secretary, and after some conversation as to the eligibility of Messrs. Pinchback and Anderson to serve on the board during the canvass of the present election, both being candidates for office, the board adjourned to 12 o'clock m. tomorrow.

JOHN LYNCH,
Secretary.

SECOND DAY.

NEW ORLEANS, *November* 13, 1872.

Board met in the governor's office at noon.

Present: Governor Warmoth, Lieutenant-Governor P. B. S. Pinchback, Secretary of State F. J. Herron, and John Lynch. Absent: T. C. Anderson.

The minutes of yesterday's meeting were read and approved.

Chief Justice Ludeling being announced, was introduced and administered the oath of office to Governor Warmoth, Secretary of State Herron, and John Lynch.

Lieutenant-Governor Pinchback declined to be sworn in until the question of his eligibility to serve was decided.

John Lynch then submitted the following resolution, which was adopted:

"Whereas section 57, act No. 100, acts of 1870, states that should any of the returning-officers named in this act be a candidate for any office at any election, he shall be disqualified to act as returning-officer for that election." Therefore—

Resolved, That Lieutenant-Governor Pinchback and T. C. Anderson, both candidates for election at this time, are disqualified to act as "returning-officers."

On the adoption of the resolution, Governor Warmoth had Mr. Jack Wharton called into the room where the board were in session, who, on entering, handed General Herron a paper which proved to be a notification that he (Wharton) had been appointed secretary of state, and that Herron was removed.

A commission, signed by Governor Warmoth, appointing Mr. Wharton to the office of secretary of state, was laid before the board; also a certificate from Auditor Graham, which the secretary did not read, but the purport of which was that General Herron was a defaulter to the State.

Mr. Lynch protested against Mr. Wharton's taking a seat, as he (Lynch) recognized General Herron as a *de-facto* officer until decided otherwise by regular judicial proceeding. General Herron moved, Mr. Lynch assenting, that James Longstreet and Jacob Hawkins be appointed to the places made vacant by the disqualification of Messrs. Pinchback and Anderson.

Governor Warmoth moved that Durant Da Ponte and F. H. Hatch be appointed, and declared it carried, although Messrs. Lynch and Herron voted no.

At this point Messrs. Durant Da Ponte and F. H. Hatch entered with Judge Cooley, who immediately commenced to administer the oath of office to them, whereupon Messrs. Lynch and Herron protested and withdrew.

Messrs. Herron and Lynch, a majority of the duly-qualified members of the board, having designated James Longstreet and Jacob Hawkins to fill the vacancies caused by the disqualification of Messrs. Pinchback and Anderson, addressed them notice of appointment.

STATE OF LOUISIANA, *Parish of Orleans:*

I hereby certify that all the foregoing is a true and correct copy of the minutes of the proceedings of the board of returning-officers of the State of Louisiana, commencing on page 1 and ending on page 3, fifteenth line of the minutes-book of said board.

JACOB HAWKINS,
Secretary of the Board.

NEW ORLEANS, *November* 18, 1872.

Letter of General Longstreet to Governor Warmoth demanding the returns of election.

Offered by complainant November 25, 1872.

MECHANICS' INSTITUTE, *November* 15, 1872.

SIR: I have instructions from the State board of election returns to see that all election statements of the election of November the 4th in

this State are properly and promptly placed in the possession of said board.

I must therefore ask that you place the same in the possession of Assistant Deputy Marshal W. F. Loan, in order that he may deliver the same to Mr. John Lynch, president of the board.

I am, sir, very respectfully, your obedient servant,

JAMES LONGSTREET,
Deputy Supervisor.

Governor H. C. WARMOTH, *Present.*

A true copy:

JAMES LONGSTREET,
Deputy United States Supervisor.

Answer of Governor Warmoth to General Longstreet demanding election returns.

Offered by complainant November 25, 1872.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, November 15, 1872.

SIR: In reply to your letter, just received, informing me that you have instructions to see that all election statements of the election of November 4th in this State are properly and promptly placed in the possession of said board, and asking that I place the same in the possession of Special Deputy Marshal W. F. Loan, in order that he may deliver the same to Mr. John Lynch, president of the board, I have to say that I do not recognize your authority as deputy supervisor to make such demand, nor have I any knowledge of the existence of any such body as that presided over by Mr. John Lynch. The election returns received by me as president of the State board of canvassers are, and will remain, in the possession of myself as president of the State board of canvassers, in accordance with the law of the State, and I alone am authorized to hold and open them.

Very respectfully, your obedient servant,

H. C. WARMOTH,
Governor of Louisiana.

General JAMES LONGSTREET,
Deputy United States Supervisor.

A true copy:

JAMES LONGSTREET,
Deputy United States Supervisor.

Petition.

Offered by complainant November 25, 1872.

Eight district court, parish of Orleans. No. 3556. State of Louisiana et al. *vs.* Franklin J. Herron.

To the honorable the judge of the eighth district court in and for the parish of Orleans, in the State of Louisiana:

The petition of the State of Louisiana, represented by Simeon Belden,

attorney-general of said State, in his official capacity as aforesaid, respectfully represents, upon the information of George E. Bovee, secretary of state of the State of Louisiana, who is joined with the State of Louisiana and made party complaining and plaintiff herein, that said George E. Bovee was elected secretary of state of the State of Louisiana at the general election held on the 17th and 18th days of April, in the year A. D. 1868.

That the term of said office, under the constitution of the State of Louisiana, is four years, and the salary thereof three thousand dollars.

Now, petitioner represents that said George E. Bovee, after his election as aforesaid, qualified as required by law, was commissioned by the governor of Louisiana, Henry C. Warmoth, assumed the duties of said office about the 15th day of June, A. D. 1868, and continued to exercise and perform the duties of secretary of state as aforesaid until the 29th day of August, A. D. 1871, when he was forcibly ejected from the office of secretary of state by Franklin J. Herron, a resident of the city of New Orleans, assisted by Superintendent Badger, Captain Edgeworth, and three other persons belonging to the metropolitan police of the city of New Orleans.

That having ejected said Bovee, secretary of state as aforesaid, the said Franklin J. Herron took possession of the seal of the State of Louisiana, and the State archives, and all papers belonging to the State of Louisiana, which by law belong to the custody and keeping of the secretary of state.

That said Franklin J. Herron has thus usurped, intruded into, and is now unlawfully holding and exercising the functions and duties of secretary of state of the State of Louisiana, a public officer created by the constitution of the State of Louisiana.

That said Herron pretends to exercise said functions by virtue of authority from His Excellency H. C. Warmoth, governor of the State of Louisiana.

But petitioner avers that the term of office of George E. Bovee not having expired, and there being no vacancy therein, the governor of Louisiana was without authority of law to either remove or suspend said Bovee from the exercise of the functions and duties of said office.

That said Bovee holds his office by virtue of his election thereto under the constitution of the State, and that his tenure of office does not depend upon executive will, but is fixed and limited by the organic law of the State of Louisiana.

That said Bovee is the secretary of state as aforesaid, and entitled to exercise the duties and functions thereof.

Petitioners further represent that the amount of money in controversy, apart from the question of title to office, exceeds the sum of five hundred dollars.

Wherefore, the premises considered, petitioner prays that the said Franklin J. Herron be duly cited to appear and answer the allegations and demands contained in this petition, and after due and legal proceedings had, that there be judgment in favor of plaintiff, decreeing George E. Bovee to be secretary of state of Louisiana, and as such entitled to exercise all the functions and duties pertaining to said office, and entitled to the custody and keeping of the seal of the State of Louisiana, with the archives, books, and papers belonging to said State, and that he be put in possession thereof, and maintained in said office; and further, that said Franklin J. Herron be decreed to have usurped and intruded into said office of secretary of state, and as such is unlawfully holding and exercising the functions and duties of the

office of secretary of state as aforesaid, a public office under the constitution of the State of Louisiana, and that he deliver the same to George E. Bovee, with everything pertaining thereto, and taken possession of as aforesaid.

They pray for such other and further relief as may be necessary, and for general relief in the premises.

SIMEON BELDEN,
Attorney-General of Louisiana.

Judgment.

In this case, submitted to the court for determination, after deliberation and for the reasons assigned in the written opinion this day delivered and filed, the court considering the law and the evidence to be in favor of the defendant—

It is ordered, adjudged, and decreed that this suit be dismissed at the cost of the plaintiffs. Judgment rendered October 10, 1871, and signed October 20, 1871.

CHAS. M. EMERSON,
Judge of the Third District Court for the Parish of Orleans.
Acting in the absence of the Hon. H. C. Dibble, judge of this court.

A true copy:

O. M. TENNISON,
Deputy Clerk.

Answer.

Eighth district court. No. 3556. State of Louisiana et als. *vs.* Franklin J. Herron.

Filed November 10, 1872.

Now comes the defendant, F. J. Herron, and for answer says that he denies all the allegations of plaintiff's petition not herein specially admitted.

He avers that he holds the office of secretary of state by appointment of the governor of the State; that he was so appointed after the suspension of the informer and plaintiff, George E. Bovee, by the governor of the State for malfeasance in office; that the governor was empowered and authorized to make such suspension, and the appointment of respondent, on the following grounds, and for the following reasons:

First. That the said George E. Bovee had violated the law and his oath of office in this, in taking a paper purporting to be the bill incorporating the Crescent City Water Works Company, prepared by Oscar J. Dunn, lieutenant-governor of the State, and ex-officio president of the senate of the State, and George W. Carter, speaker of the house of representatives of the State, or by some other person to respondent unknown, and certifying that the same had been presented to the governor of the State for his approval on the twenty-fifth day of February 1871, and that the legal time for the same had elapsed before the adjournment of the legislature of the State without the return of the same to the house in which it had originated, and that this the said bill had become a law without the approval of the governor, from lapse of time, when the said Bovee knew that such was not the fact, and that he was certifying

to that which he knew to be untrue, in this, that the said paper was not the bill passed by the legislature, enrolled by the proper committee, and signed by the proper officers as such original bill, but that the same was an original paper purporting to be a copy of the original from which it was not made and with which it was never compared.

Second. That at the time he, the said Bovee, gave such certificate he knew that the original and only bill passed by the legislature was in the possession of the governor, who had refused to approve and intended to veto the same at the meeting of the legislature on the next meeting thereof.

Third. That the said Bovee knew when he gave the same certificate, and so the fact is, that the said original bill was not presented to the governor for his approval five days before the adjournment of the legislature, and that the same was not entitled to become a law through any approval or action of his whatever.

Fourth. That the said Bovee certified that the said charter of the said Crescent City Water Works Company had become a law when he knew that such was not the case, contrary to the will, consent, and approval of the governor, and with the fraudulent intent to injure the State, and to endeavor to make that a law which did not have the legal sanction for that purpose.

That the said improper, illegal, and unjust conduct of said Bovee gave the governor, who is charged with the conservation and enforcement of the laws, the right to suspend him and put respondent in his place until the meeting of the legislature in January next.

Wherefore respondent prays that plaintiff's petition be dismissed and his demand rejected.

SEMMES & MOTT,
WM. GRANT,
Attorneys for Defendants.

A true copy.

O. W. TENNISON, *Deputy Clerk.*

Affidavit of John Lynch.

Offered by complainant November 25, 1872.

Eighth district court for the parish of Orleans. Nos. 13545, 13546.

John Lynch, being duly sworn, says that the annexed document, marked A 1, is a true, full, and complete transcript of the minutes of the board of returning-officers of the election of November 4, 1872, as held on the twelfth and thirteenth of November instant, and that all those minutes are a true, full, and complete record of everything that transpired at the sessions held on those days, and that no other business was transacted by the board of returning-officers on those days than is contained in said minutes, except that, after the adjournment of the board, a communication was addressed to Messrs. Longstreet and Hawkins, notifying them of their appointment, a copy of which is annexed as a part hereof, and marked A 2, and that they afterwards presented their respective oaths of office on the same day, hereto annexed as part hereof and marked A 3 and A 4.

Affiant further swears that at the time of the administering of the oaths of office, as detailed in the minutes, to affiant, H. C. Warmoth and F. J. Herron, all three took the oath simultaneously. It was administered to them by Chief Justice Ludeling; that he was not present when

any oath was administered to F. H. Hatch or Durant Da Ponte as returning-officers of election, nor did he ever consent to recognize them or Jack Wharton as such; that at the time he left the room wherein the meeting was held, and as he was going out, there was the appearance of an oath being administered to Messrs. Hatch and Da Ponte, but the administering of such oath had not been completed; that subsequently the board of returning-officers of election met, and by resolution requested the attorney-general to institute this suit, as will appear by copy of resolution hereto annexed and made part hereof, marked A 5.

F. J. Herron, being duly sworn, says that he has read the foregoing affidavit of John Lynch, and that the same is true; that it is untrue that he has been deprived of the seal of State, or dispossessed thereof, but is still in possession of the same, and that said Jack Wharton has not been in possession of the office or rooms of the secretary of state's office, but that the same is, and has been, in possession of the police since the 13th of November instant.

A true copy.

ROBERT LYNNE, *Deputy Clerk.*

Filed November 19, 1872.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, November 13, 1872.

Whereas by an amendment of the constitution of the State, adopted at the general election held November 70, 1870, it is provided that "no person who at any time may have been a collector of taxes, whether State, parish, or municipal, or who may have been otherwise intrusted with public money, shall be eligible to the general assembly or to any office of profit or trust," &c.; and

Whereas official information has been received at this office that F. J. Herron is indebted to the State for moneys collected by him as tax collector in and for the sixth district, city of New Orleans:

Now, therefore, I, Henry Clay Warmoth, governor of the State of Louisiana, charged with the faithful execution of the laws under the constitution of the State, and in due observance of the provisions of the amendments to the same, do issue this my order removing F. J. Herron from the office of secretary of state, and do hereby appoint Jack Wharton to discharge the duties of said office.

Given under my hand and the seal of the State this 13th day of November, A. D. 1872, and of the Independence of the United States the ninety-seventh.

[SEAL.] H. C. WARMOTH,
Governor of Louisiana.

Y. A. WOODWARD,
Assistant Secretary of State.

A true copy from the records on file in the office of the secretary of state.

[SEAL.] Y. A. WOODWARD,
Assistant Secretary of State.

A true copy of the document on file in the suits 13545, 13546, of the docket of the eighth district court for the parish of Orleans.

ROBT. LYNNE, *Deputy Clerk.*

Affidavit of A. S. Badger, superintendent of police

Filed November 19, 1872.

STATE OF LOUISIANA, *Parish of Orleans:*

A. S. Badger, superintendent of police, after being duly sworn, deposes and says that he is not in possession of the office of secretary of state; that none of his subordinates, or any member of the police department, is in possession of said office; that Jack Wharton is, to the best of his knowledge and belief, in possession of said office of secretary of state.

A. S. BADGER.

Sworn to and subscribed before me this 18th day of November, A. D. 1872.

CHAS. S. RICE,
United States Commissioner, District of Louisiana.

Circuit court of the United States for the district of Louisiana.

Wm. P. Kellogg *vs.* H. C. Warmoth. No. 6830.

Personally appeared Henry C. Warmoth, made defendant in the above-entitled suit, who, being sworn, says that he is governor of the State of Louisiana; that it is utterly untrue that he ever avowed or had the intention to use any of his powers unlawfully as governor of Louisiana to defeat the election of the complainant, but that, on the contrary, it was always his purpose as it was his duty to use these powers to secure a fair expression of popular sentiment at the ballot-box.

That he did not select supervisors pliable to his will, as charged in the bill of complainant. Nor did he make any conditions precedent in the appointment of said supervisors or other officers charged with the conduct of said election.

That it is untrue, as charged in said bill, that affiant had any connection with or knowledge of any plan to deprive a large number or indeed any citizen of the right to register on account of race, color, or previous condition, or for any other cause.

Affiant denies that by any scheme of which he has knowledge, or with which he had any connection, ten thousand voters, or indeed any number of voters, were refused registration or the right to vote at the election which took place on the fourth day of November last.

He denies that he adopted the means charged, or any other means whatsoever, to deprive voters of their franchise, and to defeat the election of complainant by preventing their ballots from being cast.

Affiant denies that ten thousand voters, or any number of voters, were refused registration through any conspiracy to which he was a party, who afterwards offered to vote for complainant, and were refused as charged.

Affiant denies that complainant is in possession of any evidence, under act of thirty-first of May, 1870, or any other act amendatory thereof, which goes to show that any of the complaints of said bill against affiant are true.

He denies that there are documents, having the least truth in them, which show that from three to five thousand persons, or any number of persons, were refused their right either to register or vote, on account of race, color, or previous condition.

He denies that he has conspired with supervisors or assistant supervisors of registration, to cause a dishonest, incorrect, and false count of the votes cast in the several parishes, or that he has caused false and untrue returns and certificates of the result and canvass of the votes cast in the several parishes as charged, by not counting the ballots deposited by persons of color, or that any ballots cast for complainant, whether by colored or white persons, have been suppressed or not counted, with his knowledge or by his connivance or consent.

Affiant denies that Jacob Hawkins or James Longstreet were ever elected members of the board of returning officers, or that said persons were ever recognized upon said board, of which affiant is president.

That it is utterly untrue, as charged, that affiant refuses to open the returns, influenced by fear that the board of returning-officers would make a true and proper investigation of the truthfulness of returns, and the scheme for excluding ballots would be defeated, or that evidence of frauds that had been committed and of the fact that a large number of persons had at such election offered to vote and had been refused, contrary to law and laws of the United States, would be discovered and preserved in such form as that the same could be used and made available in any action or proceeding instituted by complainant to determine the right to office.

All of this is specially denied by affiant as without the least foundation or appearance of truth, as well as the charge that he caused an adjournment of the board of returning-officers for the purpose of concealing or covering up frauds, or to prevent the proper and legal canvass, or that he ejected F. J. Herron from the office of secretary of state for the purposes charged.

Affiant now denies that he is a party to any plan and scheme, or conspiracy of any kind whatsoever, the object of which is to suppress or destroy, or place beyond the reach of the complainants, any documents or evidence of any kind relating to the election which might avail or aid the complainant in any suit he might have the right to bring, either before this or any other court of justice.

This deponent says that said F. J. Herron was appointed by this deponent, as governor of this State, in the year 1871, to discharge the duties of secretary of state during the suspension of George E. Bovee, who had been elected secretary of state at the general election of 1868, and who was suspended by this deponent for malfeasance in office; that he removed said F. J. Herron from the discharge of the duties of secretary of state on the thirteenth of November, 1872, as he had a right to do; that at the meeting of the returning-officers of election, F. H. Hatch and Durant Da Ponte were duly selected returning-officers; that at said meeting Herron having been removed and Jack Wharton appointed secretary of state, this deponent, in the presence of said Wharton and Lynch, moved the appointment of said Hatch and Durant Da Ponte as returning-officers, and said motion was put and declared carried, the said Lynch not voting "yea" or "nay."

This deponent further says that suits are now pending in the eighth district court, parish of Orleans, in which the said Longstreet, Hawkins, Lynch, and Herron claim to be the legal returning-officers, and that this suit is brought against said Wharton, Da Ponte, and Hatch, and this suit is undetermined, and a similar suit brought in said court by said Herron against said Wharton, claiming the office of secretary of state, is pending already, as appears by copies of the petition in said suits herewith filed.

This deponent says that the complainant, at the time of the election,

on the 4th of November, 1872, and ever since, and now is, a Senator of the United States.

H. C. WARMOTH.

Sworn to this 19th day of November, 1872.

JOHN B. WELLER,
United States Commissioner.

Petition.

To the honorable the eighth district court for the parish of Orleans:

The petition of the State of Louisiana, on the relation of the attorney-general, and on the information of the returning-officers of election, to wit, Henry C. Warmoth, Frank J. Herron, John Lynch, James Longstreet, and Jacob Hawkins, composing the board of said returning-officers, respectfully represents, that the above-named returning-officers of elections are duly qualified as such for making the returns of the election held in this State on the 4th of November instant; that Jack Wharton, F. H. Hatch, and Durant Da Ponte are pretending to be such returning-officers, and attempting to act as such, and are interfering with the above-named returning-officers of elections in the discharge of their duties as such officers, and especially with Frank J. Herron, James Longstreet, and Jacob Hawkins, and are intruding into and usurping the office of returning-officers of elections of the State, contrary and in violation of law and the rights of petitioner.

Wherefore, the premises considered, petitioner prays that said Jack Wharton, F. H. Hatch, and Durant Da Ponte be cited to answer this petition, and that after all due proceedings, they be decreed to be intruders into, and usurpers of, the office of returning-officers of election, and that Frank J. Herron, James Longstreet, and Jacob Hawkins be decreed to be such returning-officers; and petitioners further pray for costs and all general relief.

SIMEON BELDEN,
Attorney-General.

A. P. FIELD and J. Q. A. FELLOWS, *of Counsel.*

A true copy:

ROBERT LYNNE,
Deputy Clerk.

Supplemental petition.

Eighth district court, No. 13545. State of Louisiana, *ex rel.* attorney-general, on information of F. J. Herron *vs.* Jack Wharton, F. H. Hatch, and Durant Da Ponte.

The supplemental petition of the plaintiffs herein respectfully represents—

That all the allegations in the original petition are true, and, in addition thereto, that the attempt of the said defendants to act in the manner alleged in said petition, and to sit as the returning-officers of elections, and to act as such returning-officers, will defeat the object of this suit and render nugatory the judgment therein prayed for, and that an injunction is necessary to prevent such a defeat of the objects of this suit, and prevent the law and the right of the State and the parties in interest from being violated.

Wherefore petitioner prays for a writ of injunction against said Jack Wharton, F. H. Hatch, and Durant Da Ponte, enjoining and restraining them from in any way or manner, either directly or indirectly, sitting or acting as returning-officers of elections, and especially of the election held in this State on the 4th day of November instant, or from in any manner interfering with the returning-officers named in this petition, for whose benefit this suit is brought, and from intruding into and usurping the office of returning-officers of elections, and from in any way interrupting or hindering the returning-officers, and especially Frank J. Herron, James Longstreet, and Jacob Hawkins, in the discharge or performing the duties of such returning-officers, and petitioner further prays that after all due proceedings this injunction be made perpetual, and for costs and all general relief.

SIMON BELDEN,
Attorney-General.

A. P. FIELD and J. Q. A. FELLOWS, *of Counsel.*

Affidavit.

Personally appeared the undersigned, who, being duly sworn, says that all the allegations and statements of fact in the foregoing supplemental petition are true, and that an injunction is necessary.

F. J. HERRON.

Sworn to and subscribed before me this 14th November, 1872.

THOMAS LYNNE,
Clerk.

Order.

Let the defendants be ordered to show cause on Saturday, November 16, 1872, at eleven o'clock a. m., why an injunction should not issue as within prayed for and according to law. Meanwhile let the defendants be ordered to desist from the acts complained of until the hearing and determination of this rule.

New Orleans, November 14, 1872.

HENRY C. DIBBLE,
Judge.

A true copy:

ROBERT LYNNE,
Deputy Clerk.

Supplemental petition.

To the honorable the eighth district court for the parish of Orleans:

The supplemental petition of the State of Louisiana, through Simeon Belden, attorney-general, and of Francis J. Herron, secretary of state, of the State of Louisiana, with respect represents:

That these proceedings have been taken and are had with the view of maintaining the said Francis J. Herron, herewith signed with the State of Louisiana in possession of the office of secretary of state, which the said Francis J. Herron is now legally and actually possessing and exercising; that Jack Wharton, defendant herein, has threatened and is now attempting, in violation of the constitution and laws of the State, to take forcible possession of the office of secretary of state of the State

of Louisiana, and is, by force and arms, asserting a right to possess and exercise that office: and that the said defendant, Jack Wharton, is furthermore attempting, illegally and unconstitutionally, to exercise certain of the functions pertaining to the office of secretary of state, which are not actually discharged in the office of secretary of state, especially the right to sit as a member of the returning-board, organized for canvassing the returns of the general election under the act relative to elections in the State of Louisiana.

The petitioner further represents: That, in order to prevent a violation of the constitution and the laws, and in order to maintain the said plaintiff in the possession of said office pending these proceedings in conformity to the constitution and the laws, and in order to prevent the said Jack Wharton from asserting a right to, or attempting to obtain possession of, the said office of secretary of state, and in order to prevent the said defendant from attempting to exercise any of the functions of the office of secretary of state, or doing any act pertaining to said office, and especially to prevent the said defendant from attempting to exercise the duties of a member of the returning-board, under the law relative to elections in the State of Louisiana, it is necessary that a writ of injunction issue, restraining the said defendant from attempting to assert a right to the office of secretary of state, or to exercise any of the functions of said office.

Wherefore, the petitioner prays that the said Wharton be cited to answer this petition, that a writ of injunction may issue herein, enjoining Jack Wharton, defendant herein, from attempting by any manner or form to obtain possession of the office of secretary of state of the State of Louisiana, and enjoining him, the said Jack Wharton, from asserting a right to the said office in any other manner than by legal proceedings in accordance with law, and enjoining him, the said defendant, from exercising or attempting to exercise any of the functions of the office of secretary of state, and especially enjoining him, the said defendant, from attempting to exercise or from exercising any of the functions pertaining to the office of secretary of state, in connection with the canvass and returns of the general election held throughout the State of Louisiana, on the fourth day of November, eighteen hundred and seventy-two. The petitioner prays for general relief and for costs.

S. BELDEN,
Attorney-General.

J. Q. A. FELLOWS and A. P. FIELD, *of Counsel.*

Affidavit.

Personally appeared the undersigned, who, being duly sworn, says all the facts and allegations in the foregoing petition are true.

F. J. HERRON.

Sworn to and subscribed before me this 14th day of November, 1872.

ROBERT LYNXE,
Deputy Clerk.

Order.

Let this supplemental petition be filed and the defendants cited. Let the defendants be ordered to show cause on Saturday, November 16, 1872, at 11 o'clock a. m., why an injunction should not issue as within prayed for, and according to law. Meanwhile, let the defendants be

ordered to desist from acting or assuming to act as returning-officers until the hearing and determination of this rule.

New Orleans, November 14, 1872.

HENRY C. DIBBLE, *Judge.*

A true copy:

ROBERT LYNNE,
Deputy Clerk.

Affidavit of H. C. Warmoth and als.

Offered by defendant November 25, 1872.

To the honorable eighth district court for the parish of Orleans:

The petition of the State of Louisiana, through Simeon Belden, attorney-general, upon the information of Francis J. Herron, a resident of the city of New Orleans, with respect shows: That the said Francis J. Herron, joined with the State of Louisiana, is legally entitled to possession, and is in actual possession of the office of secretary of state of the State of Louisiana; that he is entitled to hold and to exercise the functions and duties of said office until his successor, elected at the general election held in the State of Louisiana on the fourth day of November, 1872, shall have been lawfully inducted into the said office.

The petitioner further represents that one Jack Wharton, a resident of the city of New Orleans, is illegally assuming to be, and is illegally asserting a right to the possession of the said office of secretary of state, in violation of the constitution and laws of the State of Louisiana; that the said Jack Wharton has no color of right or authority to possess or exercise the functions of the said office, or to possess the said office; but that, nevertheless, he asserts himself to be, and assumes to be, secretary of state as aforesaid, and to that extent the said Jack Wharton is illegally and unconstitutionally usurping and intruding into the said office in violation of the constitution and laws as aforesaid.

The State of Louisiana, by these proceedings, joins the said Francis J. Herron herewith, and prays that the said Jack Wharton may be cited to appear and answer these proceedings, and that after all due and legal proceedings had, that he may be decreed to be usurping, intruding into, and unlawfully assuming or asserting the right to exercise the functions of the office of secretary of state as aforesaid; and furthermore the petitioner prays that a judgment may be rendered in favor of the plaintiff and in favor of the said Francis J. Herron, secretary of state as aforesaid, herewith joined with the State of Louisiana, decreeing the said Francis J. Herron to be entitled to have and to hold the office of secretary of state, and to be entitled to exercise the functions of said office, and that the decree may be so rendered as to maintain him in possession of said office until his successor has been inducted into office as aforesaid.

The petitioner prays for all such further and general relief as the exigencies of the case may demand, or the law warrant, and for costs.

S. BELDEN,
Attorney-General of Louisiana.

A. P. FIELD and J. Q. A. FELLOWS,
Of Counsel.

A true copy:

ROBERT LYNNE,
Deputy Clerk.

Affidavit of John McEnery.

Offered by defendants November 25, 1872.

United States circuit court for the district of Louisiana, No. 3860. William P. Kellogg *vs.* H. C. Warmoth *et als.*

John McEnery, made a defendant herein, being sworn, says: That he is not cognizant of any plan, or scheme, or doings, by any party or person intrusted by law with any duty connected with the said election of the fourth of November, 1872, by which any other than a legal result was to be accomplished; nor is he cognizant of the intention of any one to make a sham or fraudulent return or count; and he expressly denies that he has ever, or does now, approve any such attempts or designs, as charged in the bill; that he holds no office or commission, and has nothing whatever to do with any court or return or canvass of votes; but is an entire stranger to the official conduct or private acts of any person intrusted by the laws with conducting said election.

JOHN McENERY.

Sworn to and subscribed before me this 19th of November, 1872.

F. B. VINOT,
United States Commissioner.

Affidavit of Jack Wharton.

Offered by defendants November 25, 1872.

Eighth district court, No. 1354–6. The State of Louisiana *ex rel.* attorney-general *vs.* Jack Wharton *et als.*

J. Wharton, being sworn, says: That the facts set forth in the subjoined official report of the board of returning-officers are true, and that the vote electing F. H. Hatch and Durant Da Ponte was taken in the presence of John Lynch, who did not vote either yea or nay, and that after said Hatch and Da Ponte were sworn in as members of said returning-board, F. J. Herron stated that the proceedings were irregular, and proposed to said Lynch that they should withdraw, and the said Lynch, a few moments afterward, did withdraw.

OFFICE BOARD OF RETURNING-OFFICERS,
New Orleans, November 14, 1872.

The board met at 11 o'clock, Tuesday, November 12, 1872, at the governor's parlor, in the State-house.

Present, Messrs. Warmoth, governor; Pinchback, lieutenant-governor; Herron, secretary of state, and John Lynch.

Mr. Herron raised the question of the qualifications of Messrs. Pinchback and Anderson to act as members of the board.

Mr. Warmoth asked for time to examine the question, and for the presence of Mr. Anderson.

After much debate, the board adjourned to meet at 12 m. November 13, at the governor's office.

At 12 m. the board met pursuant to adjournment.

Present, Messrs. Warmoth, Lynch, Pinchback, and Herron. Chief justice Ludeling appeared to swear in the members of the board, and each took the oath with the exception of Mr. Pinchback.

On motion of Mr. Lynch, it was ordered that, for reasons of ineligibility, Messrs. Pinchback and Anderson be not permitted to act as

members of the board. Mr. Pinchback asked the opinion of the chief justice, who took the same view. Mr. Pinchback acquiesced in the action of the board and withdrew.

Mr. Jack Wharton then appeared and presented a commission from the governor as secretary of state, exhibited his oath of office as secretary of state and as a member of the board, and took his seat. Mr. Warmoth moved that Frank H. Hatch and Durant Da Ponte be elected to fill the vacancies caused by the non-eligibility of Messrs. Pinchback and Anderson. Carried—Messrs. Warmoth and Wharton voting ay, and Mr. Lynch not voting. Messrs. Hatch and Da Ponte were then sworn in by Judge Cooley and took their seats. At this point General Herron stated that the proceedings were irregular, and left the room, followed by Mr. Lynch.

H. C. WARMOTH,
President of the Board, &c.
JACK WHARTON.

Sworn to and subscribed this 16th day of November, 1872, before me.
JOHN P. MONTAMAT.
Third Justice of the Peace.

H. C. Warmoth, being sworn, says that he has read the foregoing affidavit, and the facts therein stated are true.
H. C. WARMOTH.

Sworn to and subscribed this 16th day of November, 1872, before me.
JOHN P. MONTAMAT.
Third Justice of the Peace.

George A. Sheridan, being sworn, says he has read the foregoing affidavit, and the facts therein stated are true.
GEO. A. SHERIDAN.

Sworn to and subscribed this 16th day of November, 1872, before me.
JOHN P. MONTAMAT.
Third Justice of the Peace.

UNITED STATES OF AMERICA, *District of Louisiana:*

Personally appeared Henry C. Warmoth, Jack Wharton, and George A. Sheridan, who, being severally sworn, declare and say that the facts, statements, averments, and certificate on the first page of this sheet of paper are true.

H. C. WARMOTH.
GEO. A. SHERIDAN.
JACK WHARTON.

Sworn to and subscribed before me this 19th day of November, 1872.
JOHN B. WELLER.
United States Commissioner.

Affidavit of F. H. Hatch and Durant Da Ponte.

Offered by defendants November 25, 1872.

F. H. Hatch, being sworn, says: That he was called into the parlor of the governor's office at the State-house, at a meeting had there on the

13th November, 1872, of the returning-officers of election under the State law, and was sworn in as a member of said board in the presence of John Lynch and F. J. Herron, and no objection was made thereto by said John Lynch, and the deponent as well as Durant Da Ponte were sworn in by Judge Cooley.

After being so sworn F. J. Herron appealed to John Lynch to withdraw. Lynch replied "I don't know about that," or words to that effect; but afterward, on the importunity of said Herron, he withdrew.

F. H. HATCH.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

Durant Da Ponte, being sworn, says: The facts set forth in the foregoing affidavit of F. H. Hatch are true.

DURANT DA PONTE.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

Affidavits of Jack Wharton and H. C. Warmoth.

Offered by defendants November 25, 1872.

The defendant, Jack Warton, being duly sworn, says:

First. That on the 13th of November, 1872, he was duly appointed by the governor of the State of Louisiana secretary of state in and for the State of Louisiana, as appears by his commission hereto annexed as part hereof.

Second. That on the same day and prior to his said appointment he resigned the office of State assessor of the fifth district of the parish of Orleans, as appears by a certified copy of his resignation hereto annexed.

Third. That on the same day this deponent took the oath of office prescribed by law, as appears by a certified copy thereof hereto annexed.

Fourth. That prior to the appointment of this deponent as secretary of state aforesaid, and on the same day, to wit, 13th November, 1872, the said Herron was removed by the governor of the State of Louisiana from the performance of the duties of the office of secretary of state, as appears by a copy of the order of removal hereto annexed as part hereof.

Fifth. That said Herron was originally appointed to perform the duties of said office of secretary of state by the governor of the State of Louisiana in the place of George E. Bovee, who had been elected secretary of state at the general election held in the year 1868, and who had been suspended from the performance of the duties of said office of secretary of state by the governor of the State of Louisiana, as appears by a copy of the suspending order hereto annexed.

Sixth. That this deponent on his appointment aforesaid took peaceable possession of the office of secretary of state, the seal of the State, and the archives of the office of secretary of state by virtue of said appointment, and holds the same, and proceeded to discharge the duties

of said office, and the said Herron does not now hold the office of secretary of state, or its seal, or its archives, nor was he in possession thereof at the time the petitions were filed in these suits.

Seventh. That in suit No. 3556 of the docket of the eighth district court for the parish of Orleans, the said F. J. Herron set up and relied on the suspending order aforesaid to maintain the validity of his appointment aforesaid to discharge the duties of secretary of state as aforesaid.

JACK WHARTON.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

H. C. Warmoth sworn, says that he has read the foregoing affidavit and the facts therein stated are true.

HENRY C. WARMOTH.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

Affidavits of Wharton, Warmoth, and Sheridan.

Offered by defendants November 25, 1872.

J. Wharton, being sworn, says: That the facts set fort in the subjoined official report of the board of returning-officers are true, and that the vote electing F. H. Hatch and Durant Da Ponte was taken in the presence of John Lynch, who did not vote either yea or nay, and that after said Hatch and Da Ponte were sworn in as members of said returning-board, F. J. Herron stated that the proceedings were irregular, and proposed to said Lynch that they should withdraw, and the said Lynch a few moments after did withdraw.

JACK WHARTON.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

H. C. Warmoth, being sworn, says: He has read the foregoing affidavit, and the facts therein stated are true.

H. C. WARMOTH.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

George A. Sheridan, being sworn, says: He has read the foregoing affidavit, and the facts therein stated are true.

GEORGE A. SHERIDAN.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

Order suspending Bovee and appointing Herron.

Offered by defendants November 25, 1872.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT.
New Orleans, August 29, 1871.

Whereas George E. Bovee, secretary of state, has, in violation of the constitution and laws of this State caused to be promulgated as having become a law "An act to incorporate the Crescent City Water-Works; to define its rights and duties; to punish offenses committed against the franchises of said company and the public health," with his official certificate that the foregoing act having been presented to the governor of the State of Louisiana for his approval, and not having been returned by him to the house of the general assembly in which it originated within the time prescribed by the constitution of the State of Louisiana, has become a law without his approval.

The said certificate having been made by the said Bovee with the knowledge, communicated by the governor of the State of Louisiana on the fourth day of May, 1871, that said bill would not become a law, or be acted upon, until the first day of the next session of the general assembly; and

Whereas the said Bovee has knowingly, willfully, unlawfully, and with the purpose of imposing upon the people of the State as law that which he knows has not become law:

Now, therefore, I, H. C. Warmoth, governor of the State of Louisiana, charged with the faithful execution of the laws under the constitution of the State, do issue this my order suspending the said G. E. Bovee from the office of secretary of state, and do hereby appoint F. J. Herron to discharge the duties of said office until the legislature shall act upon the subject in accordance with the constitution.

Given under my hand and seal this 29th day of August, A. D. 1871, and of the Independence of the United States the ninety-sixth.

SEAL.] H. C. WARMOTH,
Governor of Louisiana.

O. D. BRAGDON,
Private Secretary to Governor.

A true copy from the records of the office of the secretary of state.
Y. A. WOODWARD,
Assistant Secretary of State.

Removal of Herron and appointment of Wharton.

Offered by defendants November 25, 1872.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, November 13, 1872.

Whereas, by an amendment of the constitution of the State, adopted at the general election held November 7, 1870, it is provided that no person who, at any time, may have been a collector of taxes, whether State, parish, or municipal, or who may have been otherwise intrusted with public money, shall be eligible to the general assembly, or to any office of profit or trust under the State government, until he shall have

obtained a discharge for the amount of such collections, and for all public moneys with which he may have been intrusted;

And whereas official information has been received at this office that F. J. Herron is indebted to the State for moneys collected by him as tax-collector in and for the sixth district of New Orleans:

Now, therefore, I, Henry Clay Warmoth, governor of the State of Louisiana, charged with the faithful execution of the laws under the constitution of the State, and in due observance of the provisions of the amendments to the same, do issue this my order removing F. J. Herron from the office of secretary of state, and do hereby appoint Jack Wharton to discharge the duties of said office.

Given under my hand and the seal of the State this thirteenth day of November, eighteen hundred and seventy-two, and of the independence of the United States the ninety-seventh.

[SEAL.] H. C. WARMOTH,
Governor of Louisiana.

Y. A. WOODWARD,
Assistant Secretary of State.

A true copy from the original on file in the office of the secretary of state.

Y. A. WOODWARD,
Assistant Secretary of State.

Commission of J. Wharton.

Offered by defendants.

THE UNITED STATES OF AMERICA, *State of Louisiana:*

By Henry Clay Warmoth, governor of the State of Louisiana.

In the name and by the authority of the State of Louisiana, know ye, that I have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint Jack Wharton secretary of state in and for the State of Louisiana. And I do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same, from and after the date hereof.

In witness whereof I have hereunto signed my name and caused the great seal of the State to be affixed, at the city of New Orleans, this thirteenth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh.

H. C. WARMOTH.

By the governor:
Y. A. WOODWARD,
Assistant Secretary of State.

A true copy:

Y. A. WOODWARD,
Assistant Secretary of State.

Affidavit of O. D. Bragdon.

Offered by defendants November 25, 1872.

O. D. Bragdon, private secretary of the governor, deposes and says: That he was present at the meeting of the board of returning-officers, and during the whole of the session on Wednesday, 13th November. That when the president of the board put the motion to select Messrs. F. H. Hatch and Durant Da Ponte to fill the vacancies caused by the rejection of Messrs. Pinchback and Anderson, Mr. Warmoth and Jack Wharton voted "yea," and that Mr. Lynch did not vote "yea" or "nay," but was silent during the vote. That Messrs. Hatch and Da Ponte were sworn in by W. H. Cooley, judge of the sixth district court of the parish of New Orleans, in the presence of Mr. Lynch, who did not rise from his seat during that time, nor protest against the action taken, and that it was only after Messrs. Hatch and Da Ponte had taken their seats that Mr. Lynch was prevailed upon by the importunities of F. J. Herron to leave the board. That the said Lynch did so then, without any word of protest against the action which had been taken by the board.

The deponent further states, that Mr. Lynch took with him the minutes of the previous day's proceedings, against the remonstrance of the governor: that it is not true that a motion was made and put to elect James Longstreet and Jacob Hawkins. Mr. Herron attempted to make such a motion, but was interrupted in the midst of his attempt by the governor, and prevented from completing the motion; nor did Mr. Lynch protest against the said Wharton taking his seat as secretary of state or member of the board of canvassers.

O. D. BRAGDON.

Sworn and subscribed to before me November 18, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

Affidavits of B. P. Blanchard, W. L. Catlin, and O. D. Bragdon.

Offered by defendants November 25, 1872.

STATE OF LOUISIANA, *Parish of Orleans:*

The undersigned personally appeared before ———, who declared and said, that it is to their knowledge that since the appointment of Jack Wharton to the office of secretary of state, the said Jack Wharton has been in full and complete possession of the said office of secretary of state.

That the police of the metropolitan police district has not been in possession of said office, but that said Jack Wharton, by himself or his employés, has been in actual possession of said office, and all its archives, as well as the seal of the State.

W. L. CATLIN.
B. P. BLANCHARD.
O. D. BRAGDON.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner, District of Louisiana.

Affidavit of William H. Cooley.

Offered by defendants November 25, 1872.

STATE OF LOUISIANA, *Parish of Orleans:*

Before me, the undersigned authority, personally appeared William H. Cooley, who, after being duly sworn, deposes and says: That on Wednesday, 13th November, 1872, he was present in the governor's office, in the Mechanics' Institute, where the board of State canvassers met; that it is to his knowledge that Governor Warmoth, during the sessions of the board, made a motion that Messrs. Durant Da Ponte and F. H. Hatch be declared duly appointed in the stead of Thomas C. Anderson and P. B. S. Pinchback, both determined to be incapable; that the said motion was put and carried; that John Lynch, one of the board of canvassers, was present during the whole of the proceedings, and, upon the motion aforesaid of Governor Warmoth, did not vote, either in the negative or affirmative, but the motion having been carried, the affiant, in his judicial capacity, administered the oath of office to the said parties, to wit, Messrs. Durant Da Ponte and F. H. Hatch, who thereupon took their seats at the table occupied by the board of State canvassers. Deponent further swears that during the whole of the above proceedings the said John Lynch was present, sitting at the head of the table, and only withdrew after the said Da Ponte and Hatch were regularly sworn and inducted into office; and deponent further swears that said John Lynch did not attempt to depart from the room until the said Hatch and Da Ponte were sworn in, seated at the table of the board of canvassers, and until the governor as president of the board had declared the said board organized and ready for business, and had proceeded to break open some of the returns of the election; further, affiant says that the said John Lynch did not protest against the seating of Jack Wharton as one of the members of the board of canvassers.

W. H. COOLEY.

Sworn and subscribed to before me this 18th day of November, 1872.

WILLIAM GRANT,
United States Commissioner, District of Louisiana.

Affidavit of Y. A. Woodward and O. D. Bragdon.

Offered by defendants November 25, 1872.

Y. A. Woodward, assistant secretary of state, deposes and says that he has been assistant secretary of state continuously for the past three months, and has had in his possession, as such, the seal of the State of Louisiana; that he turned the said seal over to Jack Wharton, secretary of state, on Wednesday, 13th of the present month; that the said seal was kept in the safe of the governor, except when in actual use, for safe-keeping; and that no other seal has been in use, as the seal of the State, during the time that he has

been assistant secretary of state; that it is not true, and cannot be true, that F. J. Herron has the seal of the State in his possession.

Y. A. WOODWARD.

Sworn and subscribed to before me November 18, 1872.

WILLIAM GRANT,
United States Commissioner, District of Louisiana.

O. D. Bragdon deposes and says: That the facts as stated above he knows to be true.

O. D. BRAGDON.

Sworn and subscribed before me this 18th day of November, 1872.

WILLIAM GRANT,
United States Commissioner, District of Louisiana.

Affidavit of John Douglas.

Offered by defendants November 25, 1872.

John Douglas, being duly sworn, deposes and says: That F. J. Herron called on him on Friday, the eighth day of the present month, and ordered him to make a seal of the State of Louisiana for the office of the secretary of state. It was to have been made by me and ready for delivery on the following Tuesday. General Herron did not call on Tuesday, but did call on the following Thursday. He then demanded the seal, which I refused to give him, for the reason that I observed by the press that he had been removed from the office of secretary of state. He asked me if I did not know that I was liable for damages for my refusal, to which I responded that I was willing to take the responsibility. I still have the seal in my possession.

JOHN DOUGLAS.

Sworn to and subscribed before me this 18th day of November, 1872.

O. M. TENNISON,
Deputy Clerk, Eighth District Court.

Sworn and subscribed to before me this 18th day of November, 1872.

WM. GRANT,
United States Commissioner.

Interrogatories to H. C. Warmoth, by complainant.

Filed November 20, 1872.

Circuit court of the United States, district of Louisiana. In equity No. 6830. William P. Kellogg *vs.* H. C. Warmoth *et al.*

And now comes the complainant herein, by J. R. Beckwith and William H. Hunt, his solicitors, and exhibits and files in court interrogatories to be answered by the said defendant, H. C. Warmoth, as directed and allowed by the order of this honorable court, requiring the said defend-

ant to show cause why he should not be punished for contempt of the orders and authority of this honorable court, as follows:

Interrogatories propounded to the defendant, H. C. Warmoth, under and in accordance with the order heretofore made in this cause, requiring him to show cause why he should not be punished for contempt of the authority of this court.

First. On what day and at what hour of the day were you served with a copy of the restraining order granted in this court?

Second. Had you any knowledge of the existence of said restraining order before the service of a copy of the same on you? If yea, state the day and hour when you so became acquainted with the fact that said order had been allowed.

Third. Had you at the time you first knew of the existence of said order in your possession any certificate, statement of votes made by any supervisor of registration or other officer or officers of election in any manner connected with an election held in the State of Louisiana, on the 4th day of November, A. D. 1872, and have you received any such document, paper, statement, or certificate since the service of said order?

Fourth. Have you, since the date of the service of, or of your knowledge of, said restraining order, permitted or allowed any person, other than John Lynch, Frank J. Herron, James Longstreet, and Jacob Hawkins, to see, inspect, have access to, read, or consult any paper, document, return, or certificate alluded to or in any manner referred to in the said third above propounded interrogatory, or in said restraining order, or the bill of complaint in this cause? If yea, state the names of all such persons, and why they had access to the said documents, and why and for what purpose you permitted such access.

Fifth. Is it not true that you have allowed documents, statements of votes, or other writings or statements referred to in the restraining order and bill of complaint herein, to remain in the possession of persons claiming to act as clerks, servants, in counting or making a canvass relating to said election in any manner since the date of the service of said order on you and on your co-defendants named in said order?

Sixth. Is it not true that you have publicly stated, in the presence of divers persons, that you would pay as little heed to any restraining order or injunction issued from the circuit court of the United States as you would heed so much waste paper or an injunction from a justice's court, or words of like intent, meaning, and import?

Seventh. Is it not true that you have, on one or more occasions since the service of said restraining order, announced an intention to disregard and disobey the same?

Eighth. Is it not true that you have opened sealed or unsealed packages containing statements of votes or other documents relating to an election held on the 4th day of November, A. D. 1872, the last general election since the service on you of a copy of the restraining order issued in this cause? If yea, state when, from what officer or officers or person said document, package, and envelope came, and when and in whose presence the same was or were so opened, and who and what persons besides yourself have seen the same opened, or have seen any such documents.

Ninth. Is it not true that you have advised clerks, which you claim to have appointed in connection with Jack Wharton, Durant Da l'Onte, Frank H. Hatch, or any other person or persons claiming to act as

returning-officers of election, that the restraining order issued in this cause did not affect them or any of them, and have you not permitted them, or some of them, to have custody of papers relating to said election, and had knowledge of the fact that calculations, counts, statements relating to said election have been made since the service of said restraining order?

Tenth. Is it not true that you have, since the date of the restraining order in this cause, issued commissions to some officer or officers who was or were a candidate or candidates for election to office, either State, parochial, and municipal, at the election held in this State on the 4th day of November, A. D., 1872? If yea, when did you issue such commissions, to what person or persons, and for what office or offices?

Eleventh. Is it not true that you have issued a commission to some person as sheriff of the parish of Orleans (either civil or criminal) who was a candidate for election at the last election in this State, the election referred to in the bill of complaint in this cause? If yea, state the name of the person or persons commissioned, the day and hour when such commission or commissions were delivered to such person or persons, and upon what evidence of election the same was or were issued; state particulars in full.

Twelfth. Have you done any act relating to said election referred to in the bill of complaint or tending to make known to you or any other person or persons the result of said election since the service of the restraining order in this cause? If yea, state what you have done or what you have any knowledge of having been done, in full detail and particulars.

J. R. BECKWITH,
Solicitor for Complainant.

Marshal's return.

Received by United States marshal November 20, 1872; and, on the same day, month, and year, served the within interrogatories on the within-named H. C. Warmoth, by handing the same to him, in person, at the Mechanics' Institute in this city.

C. R. STEELE,
Deputy United States Marshal.

Interrogatories to F. H. Hatch, Durant Da Ponte, and Jack Wharton, by complainant.

Filed November 20, 1872.

Circuit court of the United States, district of Louisiana. In equity. No. 6830. Wm. P. Kellogg *vs.* H. C. Warmoth *et al.*

And now comes the complainant herein, by J. R. Beckwith and Wm. H. Hunt, his solicitors, and exhibits and files in court interrogatories to be answered by the said defendants, Jack Wharton, Durant Da Ponte, and Frank H. Hatch, as directed and allowed by the order of this honorable court, requiring the said defendants to show cause why they should not be punished for contempt of the orders and authority of this honorable court, as follows:

Interrogatories propounded to Jack Wharton, Durant Da Ponte, and Frank H. Hatch, under and by virtue of the order of the court requir-

ing them to show cause why they should not be punished for contempt of court for disobedience of its orders, and required them to answer in writing, under oath, interrogatories propounded to them.

First. Is it true that you, any, all, or either of you, have acted with the defendant, H. C. Warmoth, as returning-officers to canvass or compile any of the statements of votes made by supervisors of registration about or concerning an election held in the State of Louisiana on the 4th day of November, A. D. 1872? If yea, state the day and hour at which you first began so to act, and the day and hour when you ceased to do any act as returning-officers, and severally state the day and the hour of the service of the restraining order in this cause on you respectively.

Second. Have you, or either of you, at any time since you knew of the existence of said restraining order, done, either individually or collectively, with each or any of you, or with the defendant, H. C. Warmoth, any act tending toward canvassing any statement of votes cast at the said election referred to in the bill of complaint? If yea, state the date and full details and particulars of such act or acts.

Third. Have you, or either of you, seen, had access to, read, or in any manner had made known to you, or either of you, the import, contents, statement, or any deduction made from any statement of votes, certificate, or document relating to said election referred to in the bill of complaint herein, which should properly be canvassed by returning-officer of election? If yea, state what paper or document you have seen, when, where, and by whose aid or connivance any such matter was made known to you.

Fourth. Is it not true that you, and each of you, have been well aware that persons claiming to be clerks, appointed under alleged authority of the fifty-fifth section of "An act to regulate the conduct and maintain the freedom and purity of elections," &c., approved March 16, 1870, and a law of the State of Louisiana, have had free access to papers and documents relating to said election of November 4, 1872, and have been canvassing or examining the same since the date of the service of the restraining order in this cause? If yea, state the names of such persons, and what they have done in that respect in full detail.

Fifth. Have you, or either of you, approved, made, or assisted in making, or signed, countersigned, attested, or verified any statement of canvass or calculation of the votes cast or the majority of votes cast for any person who was a candidate for office at said election, showing or tending to show the election or defeat of any such candidate, or any commission issued to any such person or persons as an officer, State, parochial, or municipal? If yea, severally state in full detail the character and date of all such act or acts.

J. R. BECKWITH,
Solicitor for Complainant.

Marshal's return of service.

Received November 23, 1872, by the United States marshal; and, on the same day, month, and year, served each of the within-named persons with a copy hereof, personally, in this city, New Orleans, November 22, 1872.

CHAS. R. STEELE,
Deputy United States Marshal.

Copy of record of suit No. 13545, in the eighth district court for the parish of Orleans.

Offered by complainant November 25, 1872.

To the honorable the eighth district court for the parish of Orleans:

The petition of the State of Louisiana on the relation of the attorney-general, and on the information of the returning-officers of elections, to wit, Henry C. Warmoth, Frank J. Herron, John Lynch, James Longstreet, and Jacob Hawkins, composing the board of said returning-officers, respectfully represents that the above-named returning-officers of elections are duly qualified as such, and for making the returns of the election held in this State on the 4th of November instant; that Jack Wharton, F. H. Hatch, and Durant Da Ponte are pretending to be such returning-officers and attempting to act as such, and are interfering with the above-named returning-officers of elections in the discharge of their duties as such officers, and especially with Frank J. Herron, James Longstreet, and Jacob Hawkins, and are intruding into and usurping the office of returning-officers of elections of the State, contrary to and in violation of law and the rights of petitioners.

Wherefore, the premises considered, petitioners pray that said Jack Wharton, F. H. Hatch, and Durant Da Ponte be cited to answer this petition, and that after all due proceedings they be decreed to be intruders into and usurpers of the office of returning-officers of elections, and that Frank J. Herron, James Longstreet, and Jacob Hawkins be decreed to be such returning-officers; and petitioner further prays for costs and all general relief.

SIMEON BELDEN,
Attorney-General.

A. P. FIELD and J. Q. A. FELLOWES, *of Counsel.*

Filed 14th November, 1872.

ROBERT LYNNE,
Deputy Clerk.

Eighth district court, No. ——. State of Louisiana, ex. rel. attorney-general, on information F. J. Herron et als. *vs.* Jack Wharton, F. H. Hatch, and Durant Da Ponte.

The supplemental petition of the plaintiffs herein respectfully represents:

That all the allegations in the original petition are true, and in addition thereto that the attempt of the said defendants to act in the manner alleged in said petition, and to sit as the returning-officers of elections, and to act as such returning-officers, will defeat the object of this suit, and render nugatory the judgment therein prayed for, and that an injunction is necessary to prevent such a defeat of the objects of this suit, and prevent the law and the rights of the State and the parties in interest from being violated.

Wherefore petitioner prays for a writ of injunction against said Jack Wharton, F. H. Hatch, and Durant Da Ponte, enjoining and restraining them from in any way or manner, either directly or indirectly, sitting or acting as returning-officers of elections, and especially of the election held in this State on the 4th of November instant, or from in any manner interfering with the returning-officers named in this petition, for whose benefit this suit is brought, and from intruding into and usurping the office of returning-officer of elections, and from in any way inter-

fering or hindering the returning-officers, and especially Frank J. Herron, James Longstreet, and Jacob Hawkins, in the discharge of, or from their performing, the duties of such returning-officers; and petitioner further prays that after all due proceedings this injunction be made perpetual, and for costs and all general relief.

SIMEON BELDEN,
Attorney-General.

A. P. FIELD and J. Q. A. FELLOWES, *of Counsel.*

Personally appeared the undersigned, who, being duly sworn, says that all the allegations and statements of fact in the foregoing supplemental petition are true, and that an injunction is necessary.

F. J. HERRON.

Sworn to and subscribed before me this 14th November, 1872.

THOMAS LYNNE, *Clerk.*

Filed 14th November, 1872.

ROBERT LYNNE,
Deputy Clerk.

Let the defendants be ordered to show cause on Saturday, November 16, at 11 o'clock a. m., why an injunction should not issue, as within prayed for, and according to law. Meanwhile let the defendants be ordered to desist from the acts complained of until the swearing and determination of this rule.

HENRY C. DIBBLE, *Judge.*

NEW ORLEANS, *November* 14, 1872.

Let writs of injunction issue, as within prayed for, without bond, the State being plaintiff.

HENRY C. DIBBLE, *Judge.*

NEW ORLEANS, *November* 19, 1872.

Eighth district court, Nos. 13545 and 13956. The State of Louisiana, ex. rel., &c., *vs.* Jack Wharton. The State of Louisiana, ex. rel., &c., *vs.* F. H. Hatch, Durant Da Ponte, &c.

The defendants, for cause why the injunction should not issue in these cases as prayed for, and for answer to the rule *nisi*, say:

First. The petition discloses no cause of action of which this court has jurisdiction.

Second. The said Wharton, as appears by the affidavits on file, was duly appointed to discharge the duties of the office of secretary of state during the suspension of George E. Bovee, and he is actually and peaceably in the discharge of said duties now, and was so at the time the petition and supplemental petition were filed.

Third. That, as it appears by the affidavits on file, the said F. H. Hatch and Durant Da Ponte were duly summoned to act as returning-officers for the election held the first Monday of November, 1872, being the fourth day of said month, and qualified as such, and their selection and appointment are valid.

Filed November 16, 1872.

O. M. TENNISON,
Deputy Clerk.

Eighth district court, No. 13545. The State, ex. rel. attorney-general, *vs.* Jack Wharton.

Now comes H. C. Warmoth, by his counsel, Semmes and Mott, and moves to dismiss the proceedings taken in this case in his name and without his authority, he having never authorized the same.

H. C. WARMOTH.
SEMMES & MOTT.

Not granted, but simply filed by order of the court.
Filed November 16, 1872.

O. M. TENNISON,
Deputy Clerk.

Eighth district court. H. C. Warmoth *et. als. vs.* F. J. Herron *et. als.*

John Lynch, being duly sworn, says that he is the person named by statute one hundred of the acts of 1870 as returning-officer of elections; that on Tuesday, November 12, 1872, there met of the said returning-officers, in the parlor of the governor of the State, the following persons: Henry C. Warmoth, F. J. Herron, P. B. S. Pinchback, and affiant; that all four were mutually recognized as such returning-officers, though the question was raised as to the eligibility of P. B. S. Pinchback, lieutenant-governor, to act at this election, he being a candidate, but no determination was arrived at. No question was made as to the qualification of the other three members of the board as named above. The board proceeded to an organization by electing Governor H. C. Warmoth , and John Lynch, affiant, secretary, when, there being no magistrate present to administer the oath of office required by the statute, the board adjourned to meet the next day at 12 m. at the same place. F. J. Herron during all this time was recognized by affiant and Governor Henry C. Warmoth as secretary of state, and, as such, as one of the returning-officers designated by law, and no question was raised as to his character or status as such returning-officer; that on the next day the board met according to the above adjournment, the members present as before, when, after discourse thereupon, the question of the eligibility of Lieutenant-Governor Pinchback was temporarily postponed, and the chief justice of the supreme court of the State, Hon. John F. Ludeling, being present, he being requested, administered the oath of office as returning-officers to H. C. Warmoth, F. J. Herron, and affiant. The oath was administered simultaneously to the three, each one rising from his seat and neither objecting to any other, but all at least tacitly consenting to the eligibility of each other as legally members of the board of returning-officers; each of the three members then resumed their seats, and without turning aside to any other business proceeded to act upon the eligibility of Lieutenant-Governor Pinchback, who, on motion of affiant, and by his vote and that of F. J. Herron, was declared ineligible by Governor H. C. Warmoth, the president of the board. From that moment the governor, H. C. Warmoth, did not leave the table nor sign any document removing F. J. Herron from the office of secretary of state, nor any commission of Jack Wharton as secretary of state, until after the board adjourned and until after the affiant had left the room with the minutes of the proceedings of the board in his possession, and which he took with him as secretary. That what followed in the proceedings of the board, and immediately after the announcement of the result of the vote on the motion of affiant declaring Lieutenant-Governor Pinchback ineligible as returning-officer of this election, is detailed in the minutes of the proceedings, hereto annexed and made a part, marked

exhibit A; that the governor, after receiving the vote of F. J. Herron as a member of the board of returning officers, and after joining with him in taking the oath of office from the chief justice, did not sign any document removing F. J. Herron from office or appointing Jack Wharton to office until after the board adjourned; that what he may have done subsequently in that regard affiant does not know; that the motion was made by F. J. Herron and voted for by him and affiant, appointing James Longstreet and Jacob Hawkins returning officers as detailed in the proceedings, exhibit A; that affiant did vote loudly, No, on the motion of Governor Warmoth to appoint Durant Da Ponte and F. H. Hatch as returning-officers of elections, and that Jacob Wharton did not vote, he never having taken the oath of office as returning-officer, had he even been secretary of state; that he did not take such oath in the presence of the board, nor was ever any certificate of such oath exhibited to the board. Affiant further says that it is not true that the oath of office had been administered to Durant Da Ponte and H. H. Hatch as returning-officers before he left the room, or that they had taken their seats at the board; that the board adjourned while Messrs. Da Ponte and Hatch were holding up their hands, and Judge Cooley was administering to them the oath of office. Affiant, with the minutes of the proceedings in his possession, and in company with F. J. Herron, left the room; that he went without delay to his room, at once proceeded to put the proceedings of the board in form, while the whole thing was fresh in his mind; and that the Exhibit A is a correct copy of those minutes, and the minutes are true and correct. That subsequently, and on the same day, affiant and F. J. Herron jointly notified James Longstreet and Jacob Hawkins of their appointment, and received from them the certificate of the oath of office as returning-officers, and saw the oath administered by the chief justice, Ludeling, all on the same day. Affiant further says that when he, on consultation with the secretary of state, F. J. Herron, had concluded that James Longstreet and Jacob Hawkins, being, as he believed and does believe, fair and just men, would be suitable persons to fill the vacancy caused by the disqualification of Messrs. Pinchback and Anderson, and he attended the meeting of the board, the two sessions held by the board on Tuesday and Wednesday, the 12th and 13th instant, with intention of voting for them to fill said vacancies.

JOHN LYNCH.

Sworn and subscribed before me, this 19th day of November, 1872.

THOMAS LYNNE,
Clerk.

Filed November 19, 1872.

O. M. TENNISON,
Deputy Clerk.

A true copy:

ROBERT LYNNE,
Deputy Clerk.

Copy of record of, and affidavits in, suit No. 13546, *in eighth district court for the parish of Orleans.*

To the honorable eighth district court for the parish of Orleans:

The petition of the State of Louisiana, through Simeon Belden,

attorney-general, upon the information of Francis J. Herron, a resident of the city of New Orleans, with respect, shows:

That the said Francis J. Herron, joined with the State of Louisiana, is legally entitled to possession and is in actual possession of the office of secretary of state of the State of Louisiana; that he is entitled to hold and to exercise the functions and duties of said office until his successor, elected at the general election held in the State of Louisiana on the 4th day of November, 1872, shall have been lawfully inducted into the said office.

The petitioner further represents that one Jack Wharton, a resident of the city of New Orleans, is illegally assuming to be and is illegally asserting a right to the possession of the said office of secretary of state, in violation of the constitution and laws of the State of Louisiana; that the said Jack Wharton has no color of right or authority to possess or exercise the functions of the said office, or to possess the said office, but that, nevertheless, he asserts himself to be and assumes to be secretary of state, as aforesaid; and to that extent the said Jack Wharton is illegally and unconstitutionally usurping and intruding into the said office, in violation of the constitution and laws as aforesaid.

The State of Louisiana, by these proceedings, joins the said Francis J. Herron herewith, and prays that the said Jack Wharton may be cited to appear and answer these proceedings; and that, after all due and legal proceedings had, that he may be decreed to be usurping, intruding into, and unlawfully assuming or asserting the right to exercise the functions of the office of secretary of state as aforesaid. And furthermore, the petitioners pray that a judgment may be rendered in favor of the plaintiff, and in favor of the said Francis J. Herron, secretary of state, as aforesaid, herewith joined with the State of Louisiana, decreeing the said Francis J. Herron to be entitled to have and to hold the office of secretary of state, and to be entitled to exercise the functions of said office; and that the decree may be so rendered as to maintain him in possession of said office until his successor has been inducted into office as aforesaid.

The petitioner prays for all such further and general relief as the exigencies of the case may demand or the law warrant, and for costs.

S. BELDEN,
Attorney-General of Louisiana.

A. P. FIELD and J. Q. A. FELLOWS, *of Counsel.*

Filed 14th November, 1872.

ROBERT LYNNE,
Deputy Clerk.

To the honorable eighth district court for the parish of Orleans:

The supplemental petition of the State of Louisiana, through Simeon Belden, attorney-general, and of Francis J. Herron, secretary of state of the State of Louisiana, with respect, represents:

That these proceedings have been taken and are had with the view of maintaining the said Francis J. Herron, herewith joined with the State of Louisiana, in possession of the office of secretary of state, which the said Francis J. Herron is now legally and actually possessing and exercising; that Jack Wharton, defendant herein, has threatened and is now attempting, in violation of the constitution and laws of the State, to take forcible possession of the office of secretary of state of the State of Louisiana, and is, by force and arms, asserting a right to

possess and exercise that office; and that the said defendant, Jack Wharton, is futhermore attempting, illegally and unconstitutionally, to exercise certain of the functions pertaining to the office of secretary of state, which are not actually discharged in the office of the secretary of state, especially the right to sit as a member of the returning-board, organized for canvassing the returns of the general election under the act relative to elections in the State of Louisiana.

The petitioner further represents that, in order to prevent a violation of the constitution and the law, and in order to maintain the said plaintiff in the possession of said office pending these proceedings, in conformity to the constitution and the laws, and in order to prevent the said Jack Wharton from asserting a right to or attempting to obtain possession of the said office of secretary of state, and in order to prevent the said defendant from attempting to exercise any of the functions of the office of secretary of state, or doing any act pertaining to said office, and especially to prevent the said defendant from attempting to exercise the duties of a member of the returning-board, under the law relative to elections in the State of Louisiana, it is necessary that a writ of injunction issue, restraining the said defendant from attempting to assert a right to the office of secretary of state, or to exercise any of the functions of said office.

Wherefore the petitioner prays that the said Wharton be cited to answer this petition that a writ of injunction may issue herein enjoining Jack Wharton, defendant herein, from attempting by any manner or form to obtain possession of the office of secretary of state of the State of Louisiana, and enjoining him, the said Jack Wharton, from asserting a right to the said office in any other manner than by legal proceedings in accordance with law, and enjoining him, the said defendant, from exercising or attempting to exercise, any of the functions pertaining to the office of secretary of state in connection with the canvass and returns of the general election held throughout the State of Louisiana, on the 4th day of November, 1872.

The petitioner prays for general relief and for costs.

S. BELDEN,
Attorney-General of Louisiana.

J. Q. A. FELLOWS and A. P. FIELD, *of Counsel.*

Personally appeared the undersigned, who, being duly sworn, says all the facts and allegations in the foregoing petition are true.

F. J. HERRON.

Sworn to and subscribed before me this 14th day of November, 1872.

ROBERT LYNNE,
Deputy Clerk.

Let this supplemental petition be filed and the defendant be cited. Let the defendants be ordered to show cause on Saturday, November 16, at 11 o'clock a. m., why an injunction should not issue, as within prayed for and according to law. Meanwhile let the defendants be ordered to desist from acting, or assuming to act, as returning-officers until the hearing and determination of this rule.

HENRY C. DIBBLE, *Judge.*

NEW ORLEANS, *November* 14, 1872.

Let injunctions issue, as within prayed for and according to law, without bond, the State being plaintiff.

HENRY C. DIBBLE, *Judge.*

NEW ORLEANS, *November* 19, 1872.

Oath of office.

I, Jack Wharton, do solemnly swear (or affirm) that I have not been convicted of treason, perjury, forgery, bribery, or any other crime punishable by imprisonment in the penitentiary; and I do further solemnly swear that I am not subject to the disabilities contained in the third section of the fourteenth amendment to the Constitution of the United States; that I accept the civil and political equality of all men, and agree to not attempt to deprive any person or persons, on account of race, color, or previous condition, of any political or civil right, privileges, or immunity enjoyed by any other class of men; that I will support the constitution and laws of this State, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as secretary of state of State of Louisiana, according to the best of my ability and understanding: so help me God.

JACK WHARTON.

Sworn and subscribed before me this 13th day of November, 1872.

Y. A. WOODWARD,
Assistant Secretary of State.

A true copy from the original on file in the office of secretary of state.

Y. A. WOODWARD,
Assistant Secretary of State.

Personally appeared A. J. Brien, who, being duly sworn, deposes and says, that on Thursday, the 14th of November instant, at about 3 or 4 o'clock p. m., in company with F. J. Herron, James Longstreet, William Roy, Timothy Kelly, and F. Garrett and others, I went to the building known as the Mechanics' Institute, on Dryades street, between Canal and Common, entered the building and the office of the secretary of state. General J. F. Herron had the key of the office in his pocket, and with the key opened the door All the above-named persons, including affiant, General Herron at the head, entered the office and remained in said room some twenty minutes or more, and in or about the building some hour or more. No one was there who opposed our entering the room, and no one was in the room on our entering. In a very few minutes quite a crowd entered, among them quite a number of police officers. After quite a prolonged conversation between General Herron and a police officer named George W. Wilder, the said Wilder stating that he had charge of that office, with orders to let no one enter that office, and especially General Herron, and especially after office hours, General Herron gave me the key of the office, which I have now and have retained ever since. When General Herron left, he went in company with the said George W. Wilder. General Herron directed Colonel William Roy to take charge of the office as his assistant secretary of state, and directed him with his friends to remain in charge. Affiant and Colonel Roy, when we left the office, left it in charge of members of the metropolitan police, Colonel Roy locking the door, leaving no one inside. I have not been inside the secretary of state's office since that time, but have been in the Mechanics' Institute building twice. The

door was then locked, and some gentleman met me at the door and said there was no admittance. Who he was I do not know.

A. J. BRIEN.
WILLIAM ROY.
FRANCIS GARRETT.

Sworn to and subscribed before me this 18th day of November, 1872.

THOMAS LYNNE,
Clerk of Eighth District Court, Parish of Orleans.

A. K. Johnson, being duly sworn, deposes and says that he fully corroborates the affidavit of A. J. Brien and William Roy, and, in addition to the statements by them, he states that he was present when General Herron entered the office of secretary of state with a key that I understood was the key of the office. No one was in the office. General Herron and some friends, named in the affidavit above, remained in the office some half hour. He locked and left Colonel Roy in charge. Neither Wharton, nor any person for him, claimed the office during my stay.

A. K. JOHNSON.

Sworn to and subscribed before me this 18th day of November, 1872.

THOMAS LYNNE,
Clerk of Eighth District Court, Parish of Orleans.

A true copy:

ROBERT LYNNE,
Deputy Clerk.

Filed November 19, 1872.

O. M. TENNISON,
Deputy Clerk.

Answers of H. C. Warmoth to interrogatories.

Offered by defendants November 25, 1872.

N. B.—The New Orleans Times of November 20, 1872, published the law annexed to these answers.

United States circuit court, district of Louisiana. In equity. Wm. P. Kellogg *vs.* H. C. Warmoth *et als.* No. 6830.

Now comes Henry C. Warmoth, and for answer to the interrogatories propounded to him in the matter of the order of this honorable court, requiring him to show cause why he should not be punished for contempt of the authority of this honorable court, says:

To the first interrogatory. He was served with a copy of the restraining order granted in this cause on the 16th November, 1872, at between 5 and 6 o'clock p. m.

To the second interrogatory, he answers, "No."

To the third interrogatory, he answers, "Yes."

To the fourth interrogatory, "No," except as hereinafter mentioned.

To the fifth interrogatory, "No," except as hereinafter mentioned.

To the sixth interrogatory, he answers, "No."

To the seventh interrogatory, he answers, "No."

To the eighth interrogatory, he answers, "No."

To the ninth interrogatory, he answers, "No."

To the tenth interrogatory. As governor of the State of Louisiana, he issued commissions to the following candidates for office at the election held 4th November, 1872:

Wm. P. Harper, civil sheriff of the parish of Orleans, on the 16th instant, at about 6 o'clock p. m.

On the 20th instant, at about 10 o'clock p. m., he issued, as governor aforesaid, commissions to the following persons:

Edmund Abell, judge of the first district court, parish of Orleans.

A. L. Tissot, judge of the second district court for the parish of Orleans.

F. A. Monroe, judge of the third district court for the parish of Orleans.

E. Worth Cullom, judge of the fifth district court for the parish of Orleans.

A. Saucier, judge of the sixth district court for the parish of Orleans.

T. Wharton Collens, judge of the seventh district court for the parish of Orleans.

W. A. Elmore, judge of the eighth district court for the parish of Orleans,

Isaac W. Patton, criminal sheriff for the parish of Orleans.

Frank Pace, clerk of the second district court for the parish of Orleans.

Thomas Duffy, clerk of the fifth district court for the parish of Orleans.

E. T. Manning, clerk of the eighth district court for the parish of Orleans.

H. N. Ogden, attorney-general for the State of Louisiana.

J. J. O'Brien, clerk of the sixth district court for the parish of Orleans.

John McPhelin, district attorney of the parish of Orleans, and other clerks of court of the parish of Orleans.

To the eleventh interrogatory. This interrogatory is answered in the foregoing answers. The commissions were issued on no evidence whatever, except that the fact of the election of said officers was notorious.

To the twelfth interrogatory, he answers, "No."

This respondent, by way of explanation to his answers of the fourth and fifth interrogatories, says that, prior to any knowledge on his part of the restraining order, this respondent, as governor of the State, had received, opened, and submitted to the legal returning-officers for said election, to wit, Jack Wharton, F. H. Hatch, and Durant Da Ponte, in conjunction with this respondent, the returns or statements of election received from many parishes in the State, and the same were in process of examination by clerks employed with the view of tabulation; that after he was served with the restraining order he remained perfectly passive. He is informed and believes said clerks went on with the work of tabulation, but without any direction from this respondent, in order to have the returns ready for submission to and examination by whatever officers should be decreed and held to be the legitimate returning-officers of election. This respondent did not believe then, nor does he now suppose, that the restraining order was intended to direct him actively to interfere to arrest this mere clerical labor necessary to prepare the statements then received and opened for submission to the inspection of the legal returning-officers, whoever they might be. If he has erred in this respect it was ignorantly and with no intention of violating the order of this honorable court.

This respondent further says that in the performance of his constitutional duty as chief executive of the State of Louisiana, he approved

and signed, on the 20th November, 1872, an act of the general assembly of the State of Louisiana, a copy of which is hereto annexed and made part hereof.

This respondent further says that he did not for a moment conceive that the restraining order inhibited him from exercising his constitutional functions as governor of the State of Louisiana in the issue of commissions to any person whom he chose to commission as an officer of the State; such certainly is not the language of the order, and if the act of issuing commissions to the officers mentioned is considered by the court a violation of said restraining order, this respondent distinctly and absolutely disavows any intention to disregard said order, and says that he was advised by counsel that the issue of said commissions by him, as governor of the State, was not inhibited by the provisions of said order, which operated to restrain him only as a returning-officer of elections in regard to matters connected with his duties as such returning-officer.

H. C. WARMOTH.

Sworn to and subscribed before me this 22d November, 1872.

K. LOEW,
United States Commissioner.

[No. 98.]

An act to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning-officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives; and to enforce article one hundred and three of the constitution.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That all elections for State, parish, and judicial officers, members of the general assembly, and for members of Congress, shall be held on the first Monday in November; and said elections shall be styled the general elections. They shall be held in the manner and form and subject to the regulations hereinafter prescribed, and in no other.

SEC. 2. *Be it further enacted, &c.*, That five persons, to be elected by the senate from all political parties, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning-officers. The returning-officers shall, after each election, before entering on their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning-officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: so help me God.

Within ten days after the closing of the election said returning-officers shall meet in New Orleans to canvass and compile the statement of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall, at such meeting, open, in the presence of the said returning-officers, the statements of the commissioners of election, and the said returning-officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation, by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The return of the election thus made and promulgated shall be *prima-facie* evidence in all courts of justice and before all civil officers, until set aside after contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

SEC. 3. *Be it further enacted, &c.*, That in such canvass and compilation the returning-officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever, from any poll or voting-place, there shall be received the statement of any supervisor of registration or commissioner of election, in form as required by section twenty-six of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning-officers shall not canvass, count, or compile the statement of votes from such poll or voting-place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning-officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statement they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning-officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning-officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning-officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning-officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns: *Provided*, That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning-officers upon making application within the time allowed for the forwarding of the returns of said election.

SEC. 4. *Be it further enacted, &c.*, That elections for representatives in general assembly shall be held on the first Monday of November, one thousand eight hundred and seventy-two, and every two years thereafter, and all elections to supply the place of senators in the general assembly, whose term of service shall have expired, shall be held at the same time as herein provided for the election of representatives.

SEC. 5. *Be it further enacted, &c.*, That all elections shall be held in each parish at the several election polls or voting-places to be established as is hereinafter prescribed.

SEC. 6. *Be it further enacted, &c.*, That all elections shall be completed in one day, and the polls shall be kept open at each poll or voting-place from the hour of six in the morning until six o'clock in the afternoon.

SEC. 7. *Be it further enacted, &c.*, That each parish in the State, except the parishes of Orleans and Jefferson, is hereby fixed as an election precinct, and the police juries shall direct what number of polls or voting-places shall be established in each precinct; shall fix the places of holding the election, and appoint commissioners of election for each poll or voting-place. For the parish of Orleans, each ward of the city of New Orleans shall constitute a precinct, and the city council shall fix the voting-places in each precinct and appoint commissioners to hold the election for each voting-place. For the parish of Jefferson there shall be two precincts, one on each side of the Mississippi River, the precinct on each side embracing that portion of the parish on the same side of the river. The police jury of each precinct of said parish shall fix the voting-places in their precinct and appoint commissioners to hold the election at each poll or voting-place: *Provided*, That there shall be at least one voting-place in each justice of the peace ward in every parish except the parish of Orleans: *Provided further*, That in the city of Carrollton the voting-places shall be fixed and commissioners appointed by the city council.

SEC. 8. *Be it further enacted, &c.*, That the election at each poll or voting-place shall be presided over by three commissioners of election, residents of the parish for at least twelve months next preceding the day of election, who shall be selected from different political parties, and be of good standing in the party to which they belong, and who shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed for State officers. Should only one of the commissioners appointed be present at the hour for opening the poll, he shall appoint another, and both together shall appoint a third; and the commissioners so appointed shall take the oath and perform all the duties of commissioners of election in the same manner as if they had been appointed as provided for regular appointment of commissioners by this act. Any one of the commissioners shall be authorized to administer the oath to the other commissioners. The commissioners of election for the several wards in the city of New Orleans shall be appointed by the mayor and administrators of the city of New Orleans.

SEC. 9. *Be it further enacted, &c.*, That it shall be the duty of the commissioners of election to receive the ballots of all legal voters who shall offer to vote, and deposit the same in the ballot-box to be provided for that purpose. The commissioners shall deposit the ballot of each voter in the ballot-box in the full and convenient view of the voter himself.

SEC. 10. *Be it further enacted, &c.*, That in all cases the vote of the person offering to vote shall be taken from the hand of the voter by one of the commissioners of election, and any commissioner of election receiving a vote from the hands of any person other than the voter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars; and any person taking a vote from a voter for the purpose of handing the same to the commissioner of election shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars: *Provided*, That any voter shall have the right to deposit his own vote in the ballot-box with his own hand.

SEC. 11. *Be it further enacted, &c.*, That any commissioner of election, constable, police officer, or election officer, who shall see any person taking from the hands of a voter his ballot with intent to pass it to the commissioners of election, or attempting so to pass such ballot, shall forthwith arrest such person and convey him at least one-quarter of a mile from the polls, and keep him there, under guard, until the close of the poll.

SEC. 12. *Be it further enacted, &c.*, That the commissioners of election shall preserve order and decorum at the election, and shall commit to prison, or, if at any place over one mile from the parish prison, to the custody of an officer, who shall convey the prisoner to a place at least a quarter of a mile from the polls, any disorderly person or persons, for a term not to extend beyond the hour of closing the polls: *Provided*, That he be permitted to vote before being imprisoned. It shall be the duty of the commissioners of election, or any of them, to issue a warrant forthwith for the arrest of such person or persons, and the officer making the arrest shall commit such person or persons, as above provided, until the close of the polls. Such warrants may be directed to any sheriff, constable, or police officer, and shall be executed immediately by such officer. As soon as practicable after the closing of the polls, such person or persons shall be brought before the proper magistrate for examination, who shall proceed forthwith to examine the case.

SEC. 13. *Be it further enacted, &c.*, That it shall be the duty of the commissioners of election, at each poll or voting-place, to keep a list of the names of the persons voting at such poll or voting-place, which list shall be numbered from one to the end; and said list of voters, with their names and numbers as aforesaid, shall be signed and sworn to as correct by the commissioners, immediately on closing of the polls, and before leaving the place, and before opening the box. If no judge or justice of the peace, or other person authorized to administer such oath, be present to do so, it may be administered by any voter. The votes shall be counted by the commissioners at each voting-place, immediately after closing the election and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any bystander or citizen who may be present. Tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall preserve the same as above required; and in the parish of Orleans the box shall be delivered to the clerk of the first district court for the parish of Orleans, and be kept by him as above directed.

SEC. 14. *Be it further enacted, &c.*, That, in case the right of any person to vote is challenged, the commissioners of election shall have power to administer oaths and affirmations to persons offering to vote at any election conducted by them, and to examine such persons under oath touching their right to vote at such election, and in all cases the commissioners of election shall appoint one of their number to keep a record of the voters during the election, and another to receive the votes; and whenever a vote is received the commissioner of election keeping the record shall call the name of the voter aloud, and shall mark the letter V opposite said name on the record.

SEC. 15. *Be it further enacted, &c.*, That all supervisors of registration, commissioners of election, and officers attending supervisors of registration or commissioners of election, shall be free from arrest during the time of registration, or of the revision of the registration, or of holding the election, or in going to or returning from the place of registration, or poll or voting-place, unless he or they shall be charged with an offense punishable with death or imprisonment in the penitentiary.

SEC. 16. *Be it further enacted, &c.*, That all proper expenses incurred for the rent of polling or voting places, and the hire of furniture, and for incidental expenses necessary for holding the election shall, upon presentation of a detailed account thereof, duly sworn by the officer directed to procure the same, be paid by the authorities of

the city of New Orleans, or of the parish, as the case may be, in which the elections are held.

SEC. 17. *Be it further enacted, &c.*, That no person shall be permitted to vote at any election to be held in this State who has not been duly registered as a qualified voter, in accordance with law.

SEC. 18. *Be it further enacted, &c.*, That any voter shall vote in the parish wherein he resides, except in the parishes of Orleans and Jefferson, wherein he shall vote at the election precinct in which he shall be a registered voter.

SEC. 19. *Be it further enacted, &c.*, That all the names of persons voted for by each voter shall be written or printed on one ticket, on which the names of the persons voted for, together with the office for which they are voted for, shall be accurately specified; and should two or more tickets be folded together the tickets so folded shall be rejected: *Provided*, That no person shall be allowed to vote for ward or municipal offices except in the ward or municipality in which he resides. The commissioners of election shall require every person offering to vote to exhibit his certificate of registration, and when the vote of such person is received the commissioners of election shall write on or stamp on such certificate or affidavit the word "voted," add the date of the vote, which shall be signed by one of the commissioners, and any person being guilty of erasing or altering any stamp or mark thus made by the commissioners of election, or any one of them, shall, upon conviction, be deemed guilty of a misdemeanor and fined and imprisoned at the discretion of the court.

SEC. 20. *Be it further enacted, &c.*, That the commissioners shall have the right to require that any person attempting to vote shall be put on his oath and made to declare whether he has voted at another poll or voting-place, and in case such person shall make a false oath he shall be subjected to the penalties provided by law for perjury; and it is hereby made the duty of any commissioner of election, upon the request of any voter, to administer the oath herein required; and any commissioner of election refusing or neglecting to administer the oath when so required shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars and by imprisonment for a term of not less than three months.

SEC. 21. *Be it further enacted, &c.*, That any person offering to vote may be required by the commissioners to make oath and declare that he is the person to whom was issued the registration certificate or any other paper upon which he offers to vote, and that he has not voted at any other poll or voting-place; and in case he shall make a false oath he shall be liable to the pains and penalties of perjury prescribed by law.

SEC. 22. *Be it further enacted, &c.*, That the supervisor of registration for each parish throughout the State shall furnish to the commissioners of election at each poll or voting-place within his parish a correct and duly certified list, written or printed, in alphabetical order, of all the registered voters, and the number of the certificate of registration of each voter of the precinct in which the poll or voting-place may be situated, and it shall be the duty of the commissioners of election, as soon as a voter has deposited his vote, to erase his name from said list. Any person, except the commissioners of election, who shall mark, disfigure, or erase any part of said list, shall be immediately arrested and confined until the close of the polls. It is made the duty of all supervisors of registration, commissioners of election, and public officers to enforce the penalty of this section.

SEC. 23. *Be it further enacted, &c.*, That the sheriff of each parish shall furnish to the commissioners of election at each poll or voting-place within his parish a box sufficient to contain the votes to be given at such place. Such boxes shall be so bound with iron bands that the same cannot be opened, except by the locks, without breaking such bands, and such boxes shall each be furnished with a good lock and key. The expenses for such boxes, on the presentation by the sheriff of a specific account, sworn by him to be correct, shall be paid by the city or parish, as the case may be.

SEC. 24. *Be it further enacted, &c.*, That all elections to be held in this State to fill any vacancies shall be conducted and managed, and returns thereof shall be made, in the same manner as is provided for general elections.

SEC. 25. *Be it further enacted, &c.*, That it shall be the duty of the governor to commission all officers-elect, except members of the general assembly, the governor, and the members of the police jury.

SEC. 26. *Be it further enacted, &c.*, That in any parish, precinct, ward, city, or town in which during the time of registration, or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation, and disturbance, bribery or corrupt influences, at any place within said parish, or at or near any poll or voting-place, or place of registration, or revision of registration, which riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences shall prevent, or tend to prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the commissioners of election, if such riot, tumult, acts of violence, intimidation, and disturbance, bribery, or corrupt influences occur on the day of election, or of the supervision of registration

of the parish, if they occur during the time of registration, or revision of registration, to make in duplicate and under oath a clear and full statement of all the facts relating thereto and of the effect produced by such riot, tumult, acts of violence, intimidation, and disturbances, bribery, or corrupt influences in preventing a fair, free, peaceable, and full registration or election, and of the number of qualified voters deterred by such riots, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences from registering or voting, which statement shall also be corroborated under oath by three respectable citizens, qualified electors of the parish. When such statement is made by a commissioner of election or a supervisor of registration, he shall forward it in duplicate to the supervisor of registration of the parish, if in the city of New Orleans to the secretary of state, one copy of which, if made to the supervisor of registration, shall be forwarded by him to the returning-officers provided for in section two of this act, when he makes the returns of election in his parish. His copy of said statement shall be so annexed to his returns of elections, by paste, wax, or some adhesive substance, that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney.

SEC. 27. *Be it further enacted, &c.*, That as soon as possible after the expiration of the time of the making of the returns of the election for Representatives in Congress, a certificate of the returns of the election for such Representatives shall be entered on record by the secretary of state, and signed by the governor, and a copy thereof, subscribed by said officers, shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Clerk thereof.

SEC. 28. *Be it further enacted, &c.*, That in case of vacancy by death or otherwise in the said office of Representative in Congress between the general election, it shall be the duty of the governor by proclamation to cause an election to be held according to law to fill the vacancy.

SEC. 29. *Be it further enacted, &c.*, That in every year in which an election shall be held for electors of President and Vice-President of the United States, such election shall be held at the time fixed by act of Congress.

SEC. 30. *Be it further enacted, &c.*, That whenever the seat of any Senator or Representative shall become vacant, and there shall be a session of the general assembly then sitting, or to be held before the next general election, it shall be the duty of the governor, within five days after such vacancy has come to his knowledge in any credible shape, to issue his writ of election, directed to the supervisor or supervisors of registration in and for the parish or parishes in which such vacancy may exist, whose duty it shall be within three days after its receipt to give public notice that an election will be held to fill such vacancy on a day to be named by them, which day shall not be less than eight nor more than fifteen days after the publication of such notice, if such election be held during or within fifteen days next preceding a session of the general assembly; but if not, then the election shall be held not less than twenty nor more than thirty days after the publication of such notice, and shall be held and conducted, and the returns thereof made, in the manner and form provided by law for general elections.

SEC. 31. *Be it further enacted, &c.*, That in all future elections for senators, representatives, sheriffs, coroners, clerks of the district courts, and other officers, if there should be an equal number of votes given for two or more candidates for the same office, the election for such office or offices thus not filled shall be again returned to the people in the parish or district as the case may be, public notice of ten days to be first given in the same manner as in the general elections.

SEC. 32. *Be it further enacted, &c.*, That the provisions of this act, except as to the time of holding elections, shall apply in the election of all officers whose election is not otherwise provided for.

SEC. 33. *Be it further enacted, &c.*, That it shall be the duty of the governor, at least six weeks before every general election, to issue his proclamation giving notice thereof, which shall be published in the official journal of the State, and copies thereof forwarded to the several supervisors of registration throughout the State.

SEC. 34. *Be it further enacted, &c.*, That notice of every general election held under the provisions of this act shall be given at least thirty days before the election, by notices posted up in each precinct, or, if there be an official newspaper published in the parish, by publishing the notice in such paper.

SEC. 35. *Be it further enacted, &c.*, That the supervisors of registration or commissioners of election shall on the day of election close all drinking-saloons, dram-shops, groggeries, or places where liquor is sold by the glass or bottle, situated in the radius of two miles of any poll or voting-place; and said supervisors of registration or commissioners of election shall have the power to call on any sheriff, constable, or police officer to enforce this regulation. If such sheriff, constable, or police officer shall refuse to obey any order issued under the authority of this section, the supervisor of registration giving the order shall summarily arrest and imprison such sheriff, constable, or police

officer, such imprisonment not to extend beyond the hour of closing the polls. And such sheriff, constable, or police officer so refusing to obey such order shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be punished by imprisonment for a term not to exceed six months nor less than three months, and by a fine of not more than five hundred dollars nor less than one hundred dollars.

SEC. 36. *Be it further enacted, &c.*, That the governor, any justice of the peace, alderman, mayor, judge, or any State officer who may be present at or have knowledge of any drinking-saloon, dram-shop, groggery, or place where liquor is sold by the glass or bottle, which is open contrary to the provisions of the foregoing section within the limits therein proscribed, may in writing order any police officer or constable to seize any such liquors, or any carriages or vessels containing the same, or any booths or tents erected within said limits for the purpose of exposing such intoxicating liquors for sale.

SEC. 37. *Be it further enacted, &c.*, That the constable or police officer to whom such orders shall be delivered shall thereupon seize all such liquor, carriages, vessels, and materials of any such tent or booth, and hold and detain the same until twenty-four hours after the close of the election, then to be delivered on demand to the owner or the person from whom they were taken, on the payment of ten dollars for the safe-keeping of said articles.

SEC. 38. *Be it further enacted, &c.*, That if these effects be not thus demanded, the same shall be sold at public auction by the police officer or constable making the seizure; and the proceeds of such sale, after deducting costs of sale and safe-keeping, shall be paid to the owner of the articles sold or the person from whom the same was taken.

SEC. 39. *Be it further enacted, &c.*, That no voter, whose name is registered according to law, shall be challenged at the polls on any question of residence, but it shall be the duty of the commissioners of election to require every person whose name appears on the registration-books to prove his identity if required by the commissioners of election; and any commissioner of election who shall receive a second vote on the same day, by virtue of the same certificate of registration, and any person who shall offer to vote a second time upon any certificate of registration, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined or imprisoned, or both, at the discretion of the court, but the fine shall not exceed one hundred dollars in each case, nor the imprisonment one year, and the like punishment shall, on conviction, be inflicted on any commissioner of election who shall neglect or refuse to make the indorsement required as aforesaid on the said registration certificate.

SEC. 40. *Be it further enacted, &c.*, That if any clerk of a court, or deputy of any such court, or any other person shall affix the seal of office to any naturalization paper, or permit the same to be affixed, or give out, or cause, or permit the same to be given out, in blank, whereby it may be fraudulently used, or furnish a naturalization certificate to any person who shall not have been duly examined and sworn in open court, in the presence of some of the judges thereof, according to the act of Congress, or shall aid in, connive at, or in any way permit the issue of fraudulent naturalization certificates, he shall be guilty of a misdemeanor; or if any one shall fraudulently use any such certificate of naturalization, knowing it to have been fraudulently issued, or shall vote or attempt to vote thereon, or if any one shall vote or attempt to vote on any certificate of naturalization not issued to him, he shall be guilty of a misdemeanor, and either or any of the persons, their aiders or abettors, guilty of either of the misdemeanors aforesaid, shall, on conviction, be fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a period not exceeding three years.

SEC. 41. *Be it further enacted, &c.*, That if any person, on oath or affirmation in or before any court in the State, or officer authorized to administer oath, shall, to procure a certificate of naturalization for himself or any other person, willfully depose, declare, or affirm any matter to be facted, knowing the same to be false, or shall, in like manner, deny any matter to be fact, knowing the same to be true, he shall be deemed guilty of perjury, and any certificate of naturalization issued in pursuance of any such deposition or affirmation shall be null and void; and it shall be the duty of the court issuing the same, upon proof being made before it that it was fraudulently obtained, to take immediate measures for recalling the same for cancellation; and any person who shall vote or attempt to vote on any paper so obtained, or who shall in any way aid in, connive at, or have any agency whatever in the issue, circulation, or use of any fraudulent naturalization certificate, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall undergo an imprisonment in the penitentiary for not more than two years, and pay a fine not more than one thousand dollars, and one thousand dollars for every such offense, or either, or both, at the discretion of the court.

SEC. 42. *Be it further enacted, &c.*, That at all general elections the names of all candidates to be voted for in the city of New Orleans shall be written or printed on one ticket or slip of paper, and the number of the ward and election precinct in which the ticket is to be voted for shall be printed or written on the outside fold thereof.

SEC. 43. *Be it further enacted, &c.*, That immediately upon the close of the polls on

the day of election the commissioners of the election at each poll or voting-place shall proceed to count the votes, as provided in section thirteen of this act, and after they shall have so counted the votes and made a list of the names of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots contained in the box, and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of Orleans to the secretary of state, by one or all such commissioners in person, within twenty-four hours after the closing of the polls. It shall be the duty of the supervisors of registration, within twenty-four hours after the receipt of all the returns for the different polling-places, to consolidate such returns, to be certified as correct by the clerk of the district court, and forward the consolidated returns, with the originals received by him, to the returning-officers provided for in section two of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery, or corruption, or other offenses specified in section twenty-six of this act, if any there be, together with all memoranda and tally-lists used in making the count, and statement of the votes.

SEC. 44. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last general assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the general assembly; and it shall be the duty of the said clerk and secretary to place the names of the representatives and senators elect so furnished upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article thirty-four of the constitution of the State.

SEC. 45. *Be it further enacted, &c.*, That any civil officer or other person who shall assume or pretend to act in any capacity as a commissioner or other officer of election to receive or count votes, to receive returns or ballot-boxes, or to do any other act toward the holding or conducting elections, or the making returns thereof, in violation of or contrary to the provisions of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not to exceed three years nor less than one year, and by a fine not exceeding three hundred dollars nor less than one hundred dollars.

SEC. 46. *Be it further enacted, &c.*, That any person or persons who shall obstruct, hinder, or, by violence or threats of violence, abusive language, or other species of intimidation, interfere with a supervisor or commissioner of election, or with any person or persons duly appointed to execute orders of the supervisor of registration or commissioners of election in the discharge of their duties, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding three hundred dollars nor less than one hundred dollars, and by imprisonment for a period not exceeding three months nor less than one month.

SEC. 47. *Be it further enacted, &c.*, That any person or persons who shall counsel, aid, connive at, abet, encourage, or participate in any riots, tumults, acts of violence, intimidation, or armed disturbance, at or near the office of any supervisor of registration on any day of registration or revision of registration, or at or near any poll or voting-place on any day of election, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period not exceeding two years nor less than six months.

SEC. 48. *Be it further enacted, &c.*, That any person who shall register, or cause to be registered, his name, or that of any other person, as a legal voter, in violation of law, or vote, or induce or cause another to vote, in violation of the laws or of the constitutional provisions in such cases made and provided, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period of not less than one year nor more than three years.

SEC. 49. *Be it further enacted, &c.*, That any person or persons who shall purchase, or cause to be purchased, the registration-papers or certificate of registration of any person duly registered according to law, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a term not less than one year nor more than three years.

SEC. 50. *Be it further enacted, &c.*, That any person who shall vote or attempt to vote on any false and fraudulent paper or certificate of registration, or upon any paper or

certificate of registration issued to a person other than the one voting or attempting to vote on said paper or certificate of registration, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a term not less than one year nor more than three years.

SEC. 51. *Be it further enacted, &c.*, That any person who shall induce, by offer of reward, by threats of violence, or otherwise, any person to vote, or attempt to vote, on any false or fraudulent paper or certificate of registration, or upon any papers or certificate of registration belonging to a person other than the one voting or attempting to vote on said paper or certificate of registration, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars nor less than one hundred dollars, and by imprisonment in the penitentiary for a period not exceeding three years nor less than one year.

SEC. 52. *Be it further enacted, &c.*, That any person who shall vote or attempt to vote more than once at the same election shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and by imprisonment in the penitentiary for a term of not less than three years.

SEC. 53. *Be it further enacted, &c.*, That it shall be the duty of any commissioner of election to forthwith arrest any person who shall vote or attempt to vote more than once, and commit him to the parish prison, and to immediately file an information against such person with the district attorney or district attorney *pro tempore*, whose duty it shall be to prosecute such person before the proper court, and upon his failure so to do, the attorney-general shall appoint some attorney to prosecute such person, and also to prosecute such district attorney or district attorney *pro tempore*, for such failure. Any supervisor of registration, commissioner of election, district attorney, or district attorney *pro tempore*, who shall refuse, neglect, or fail to comply with the provisions of this section of this act, shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be removed from office and punished by a fine of not less than one hundred dollars, and imprisoned for not less than three nor more than six months.

SEC. 54. *Be it further enacted, &c.*, That any person who shall, by threats of discharge from employment, of withholding wages, or proscription in business, influence or attempt to influence any voter in the casting of his vote at any election, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, which shall go to the school fund of the parish, and be imprisoned in the parish prison for not less than three months.

SEC. 55. *Be it further enacted, &c.*, That any person who shall discharge from his employment any laborer, employé, tenant, or mechanic, who shall have been working for such person under contract, written or oral, for a specified time, before such time shall have expired, or who shall withhold from any laborer, employé, tenant, or mechanic any part of the wages due to such laborer, employé, tenant, or mechanic on account of any vote which such laborer, employé, tenant, or mechanic has given, or proposes to give, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, one-half of which shall go to the school fund of the parish in which the offense was committed, and by imprisonment in the parish prison for not less than three months.

SEC. 56. *Be it further enacted, &c.*, That any person who shall molest, disturb, interfere with, or threaten with violence any commissioner of election, or person in charge of the ballot-boxes, while in charge of the same, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary not less than one year, or both, at the discretion of the court.

SEC. 57. *Be it further enacted, &c.*, That any person not authorized by this law to receive or count the ballots at any election, who shall, during or after any election, and before the votes have been counted, disturb, displace, conceal, destroy, handle, or touch any ballot after the same has been received from the voter by a commissioner of election, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by a fine of not less than one hundred dollars, or by imprisonment for not less than six months, or both, at the discretion of the court.

SEC. 58. *Be it further enacted, &c.*, That any person not authorized by this law to take charge of the ballot-boxes at the close of the election, who shall take, receive, conceal, displace, or in any manner handle or disturb any ballot-box at any time between the hour of the closing of the polls and the transmission of the ballot-box to the clerk of the district court, or during such transmission, or at any time prior to the counting of the votes, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary for not less than one year, or both, at the discretion of the court.

SEC. 59. *Be it further enacted, &c.*, That it shall be unlawful for any person to carry any gun, pistol, bowie-knife, or any other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, or any day of registration

or revision of registration, within a distance of one-half mile of any place of registration, or revision of registration, or election poll. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars and by imprisonment in the parish jail for not less than one month: *Provided*, That the provisions of this section shall not apply to any commissioner or officer of the election or supervisor of registration, police officer, or other persons authorized to preserve the peace on days of registration or election.

SEC. 60. *Be it further enacted, &c.*, That no person shall give, sell, barter any spirituous or intoxicating liquors to any person on the day of election, and any person found guilty of violating the provisions of this section shall be fined in a sum of not less than one hundred dollars nor more than three hundred dollars, which shall go to the school fund.

SEC. 61. *Be it further enacted, &c.*, That whoever, knowing that he is not a qualified voter, shall vote or attempt to vote at any election shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 62. *Be it further enacted, &c.*, That whoever shall knowingly give or vote two or more ballots voted as one at any election shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 63. *Be it further enacted, &c.*, That whoever, by bribery or by promise to give employment or higher wages to any person, attempts to influence any voter at any election, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and by imprisonment in the parish prison for not less than three months.

SEC. 64. *Be it further enacted, &c.*, That whoever willfully aids or abets any one not legally qualified to vote at any election shall be fined in a sum of not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 65. *Be it further enacted, &c.*, That whoever is disorderly at any poll or voting-place during the election shall be fined a sum not less than twenty dollars, to be recovered by prosecution before any court of competent jurisdiction.

SEC. 66. *Be it further enacted, &c.*, That whosoever shall molest, interrupt, or disturb any meeting of citizens assembled to transact or discuss political matters, shall be fined in a sum not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction; any sheriff, constable, or police officer present at the violation of this section shall forthwith arrest the offender or offenders and convey him or them as soon as practicable before the proper court.

SEC. 67. *Be it further enacted, &c.*, That the court imposing any fine, as directed in sections fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, and sixty-five of this act shall commit the person so fined to the parish prison until the fine is paid: *Provided*, That said imprisonment shall not exceed six months.

SEC. 68. *Be it further enacted, &c.*, That in case where any oath or affirmation shall be administered by any supervisor of registration or commissioner of election, in the performance of his duty as prescribed by law, any person swearing or affirming falsely in the premises shall be deemed guilty of perjury, and subjected to the penalties provided by law for perjury.

SEC. 69. *Be it further enacted, &c.*, That the violation of any provision of the act, or section of the act, repealed by this act shall not be considered as exempting the persons so offending from prosecution and punishment according to the provisions of said act.

SEC. 70. *Be it further enacted, &c.*, That any person duly appointed commissioner of election, and duly notified by the police jury of such appointment, who shall fail to attend the election and perform the duties of commissioner, as herein provided, except in case of sickness, shall forfeit the sum of one hundred dollars to the parish, to be recovered before any court of competent jurisdiction at the suit of the parish, to be prosecuted by the district attorney or district attorney *pro tempore*, who are hereby directed to proceed to collect such fine when it shall be brought to their knowledge.

SEC. 71. *Be it further enacted, &c.*, That this act shall take effect from and after its passage, and that all others on the subject of election laws be, and the same are hereby, repealed.

O. H. BREWSTER,
Speaker of the House of Representatives.
P. B. S. PINCHBACK,
Lieutenant-Governor and President of the Senate.
H. C. WARMOTH,
Governor of the State of Louisiana.

Approved: November 20, 1872.

A true copy.

Y. A. WOODWARD,
Assistant Secretary of State.

I hereby certify that the above is a true and correct copy from the original on file in the office of the secretary of state.

Given under my hand and the seal of the State, this 21st day of November, A. D. 1872, and of the Independence of the United States the ninety-seventh.

[SEAL.] Y. A. WOODWARD,
Assistant Secretary of State.

Answers of F. H. Hatch to interrogatories.

F. H. Hatch answers respectfully, to all the foregoing interrogatories, that since the service upon him of the restraining order issued in this case, in fact since the filing of the bill of complaint, he has done nothing whatever as returning-officer of elections; and he answers all said interrogatories in the negative.

F. H. HATCH.

Sworn to and subscribed before me, November 22, 1872.

F. A. WOOLFLEY,
United States Commissioner.

Answers of Jack Wharton to interrogatories.

Filed November 22, 1872.

Jack Wharton answers respectfully all the foregoing interrogatories, that since the issue of the restraining order or the filing of the bill of complaint in this court he has done nothing whatever as returning-officer of elections; and he answers all said interrogatories in the negative.

JACK WHARTON.

Sworn to and subscribed before me November 22, 1872.

F. A. WOOLFLEY,
United States Commissioner.

Answers of Durant Da Ponte to interrogatories.

Filed November 22, 1872.

W. P. Kellogg *vs.* H. C. Warmoth *et al.* United States circuit court—No. 6830.

Durant Da Ponte, being duly sworn, deposes and says—

In answer to interrogatory No 1: It is not true as to myself, nor within my knowledge, as to any other defendant in this case.

In answer to interrogatory No. 2: I have not.

In answer to interrogatory No. 3: I have not.

In answer to interrogatory No. 4: I am not aware of the facts stated.

In answer to interrogatory No. 5: No.

DURANT DA PONTE.

Sworn to and subscribed before me November 22, 1872.

F. A. WOOLFLEY,
United States Commissioner.

Order on F. H. Hatch and Jack Wharton to show cause, &c.

Entered and filed November 23, 1872.

Circuit court of the United States, district of Louisiana. No. ——.
William P. Kellogg *vs.* H. C. Warmoth *et al.*

And now comes the complainant herein, by J. R. Beckwith, William H. Hunt, and E. C. Billings, his solicitors, and on suggesting to the court that the said defendants, Jack Wharton and Frank H. Hatch, have failed to comply with the order of this honorable court, ordering and requiring them severally to true, full, and complete answers make to the interrogatories filed and exhibited in this cause upon the rule and order requiring them to severally show cause why they should not severally be attached and punished for contempt of court, and it appearing their said several alleged answers are imperfect, partial, evasive, and indefinite—

It is ordered that the said defendants, Jack Wharton and Frank H. Hatch, do, on or before 11 o'clock a. m. of Monday, the twenty-fifth day of November, A. D. 1872, in writing, under their several respective corporal oaths, and according to the best of their several respective knowledge, information, and belief, full, true, and specific and unevasive answers make to each and every of said written interrogatories so filed and exhibited in this cause.

Marshal's return of service.

Received November 23, 1872, by the United States marshal, and on the same day, month, and year served a copy hereof on Jack Wharton and Frank H. Hatch by handing the same to each of them in this city personally.

C. R. STEELE,
Deputy Marshal.

Answers of F. H. Hatch to interrogatories.

Filed November 25, 1872.

Now comes F. H. Hatch, and, for more specific answers to the interrogatories propounded to him in the matter of the rule for contempt in this case, says:

To the first interrogatory: No.
To the second interrogatory: No.
To the third interrogatory: No.
To the fourth interrogatory: No.

The restraining order was not served on me until after the 16th of November, 1872, to wit, until the 19th of November, 1872, but I knew of its existence on the morning of the 17th of November, 1872.

F. H. HATCH.

Sworn to and subscribed before me this 25th day of November, 1872.

F. B. VINOT,
United States Commissioner.

Answer of Jack Wharton to interrogatories.

Filed November 25, 1872.

Now comes Jack Wharton, and, for more specific answers to the interrogatories propounded to him in the matter of the rule for contempt in this case, says:

To the first interrogatory: No.
To the second interrogatory: No.
To the third interrogatory: No.
To the fourth interrogatory: No.
To the fifth interrogatory: No.

The restraining order was not served on me until after the 16th of November, 1872, but I knew of its existence an hour or so after it was served on Governor Warmoth; that is to say, about 8 or 9 o'clock p. m., on the 16th of November, 1872.

JACK WHARTON.

Sworn to and subscribed before me this 25th day of November, 1872.

F. B. VINOT,
United States Commissioner.

DEFENDANT'S ANSWER.

WM. P. KELLOGG, *vs.* H. C. WARMOTH *et als.* } No. 6830. In chancery.

In the circuit court of the United States for the fifth circuit and district of Louisiana.

The answer of Henry C. Warmoth, one of the defendants to the bill of complaint of William Pitt Kellogg, complainant.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto saith:

This defendant admits that there was a general election held on the 4th day of November, 1872, in the State of Louisiana, under the authority of the laws of the said State; that a governor, lieutenant-governor, and others were to be, and were, voted for at said election; that the complainant and John McEnery were candidates for governor; that by the law of the State no person was qualified to vote as an elector until he had been registered in a list of persons entitled to vote at said election; that the provisions of the law of the State at that time relating to registering vested in this respondent, as governor of the State of Louisiana, the appointment of the officers whose duty it was to register all such voters.

And this defendant, further answering, saith, that it is not true, as charged in said bill of complaint, that at all times since the complainant became a candidate for such election this respondent, governor of the State of Louisiana, has repeatedly avowed his intention to adopt all means in his power, and to so exercise unlawfully, and to extend his power and the power conferred on him by his position as governor, as to unlawfully defeat the election of complainant; nor is it true that for the said purpose, in the appointment of the supervisors of registration, he has selected persons for the office of supervisors and assistant supervisors of registration as to obtain persons pliable to his will, and who would con-

cur with, and aid him, respondent, in the execution of any unlawful plans and fraudulent devices; nor is it true that to that end, and for that purpose, this respondent did especially, or any other wise, make it a condition precedent to the appointment of said officers that they should in all things, and by all unlawful means within their power, assist in the accomplishment of said ends.

That it is not true that one of the unlawful devices, plans, and schemes of the respondent was through the instrumentality of the said registering-officers, and with their aid, and by the pretended aid of laws of the State, to deprive a large number of the citizens of the State of Louisiana, in all respects lawfully entitled to the franchise, by refusing to register the said citizens upon the list of registered voters, by reason of their race, color, and previous condition; nor is it true that in the execution of said scheme, or in the execution of any other scheme, a large number of citizens of the State, who are colored, and who had been in a former condition of servitude, were so refused registration on various frivolous and unlawful pretexts and pretenses, amounting to ten thousand votes, or any other number.

That it is not true, as charged in said bill, that this respondent adopted the means and devices aforesaid, or any other means or devices, for the purpose of depriving said voters of their right of franchise as aforesaid, with the intent thereby to prevent their ballots being cast for the complainant, and thereby to defeat complainant's election to the office of governor.

And this defendant, further answering, saith, he knows not, and has not been informed, save by the said complainant's bill, and cannot set forth as to his belief or otherwise, whether, when the said supervisors of registration had completed the registration of the qualified electors of the State, they had succeeded in preventing the registration of a large, or any number, of electors, as charged in said bill of complaint; nor that when persons so refused registration as aforesaid offered to deposit their ballots for the complainant in the ballot-boxes at the places of election, they were refused the right to deposit said ballots; nor that the complainant is in possession of evidence of that fact, preserved under the provisions of the act of Congress of May 31, 1870, and the acts amendatory thereto; nor that there are in existence from three to five thousand documents of the same character that have been in the same manner preserved, with the ballots attached to said affidavits and certificates, in which the complainant was included by name, as candidate for the office of governor of the State of Louisiana; nor that the persons so offering to deposit said ballots were in each and every instance persons of color, and were refused the right of franchise on account of race and color.

And this defendant, further answering, saith, that it is not true, as charged in said bill of complaint, that this respondent, combining and conspiring with the supervisors and assistant supervisors of registration by him appointed, has caused a dishonest, incorrect, and false account of the votes cast in the several parishes of this State at said election. Nor is it true, as charged in said bill, that this respondent has falsified and caused false and untrue returns and certificates of the result and canvass of the votes cast in the several parishes in this State at said election; nor that said count, canvass, and certificates are so false and untrue, for the reason that a large number of the ballots deposited in the said ballot-boxes at said election by persons of color have not been counted, and considered, and the evidence thereof preserved and certified, so that the same may be canvassed by the returning-officers for

elections in this State; nor is it true that they were so suppressed, or that any ballots were suppressed and not counted and considered that were cast for and in favor of the complainant as governor of this State, or that they were in all things sufficient to have elected the complainant to said office; and this respondent denies that he has any knowledge of any suppression of any votes whatever, or that he ever authorized, aided, or abetted the suppression or false return of any votes cast at said election, or did any other unlawful act to defeat the election of the complainant.

This defendant, further answering, saith, that it is true that the returns of the elections for the precincts of the State were, by the law as it stood on the 4th of November, 1872, to be sent by mail addressed to this respondent as governor of the State of Louisiana. That the law as it then stood provided that the governor, lieutenant-governor, secretary of State, John Lynch, and T. C. Anderson, or a majority of them, should be the returning-officers of all elections of the State, a majority of whom should constitute a quorum, and have power to make the returns of all elections; that in case of vacancy the same should be filled by the residue of the board; that within ten days of the election the returning-board should meet to canvass and compile the statement of votes made by the supervisors, and make returns to the secretary of State; that *the governor should at such meeting open in the presence of said returning-officers* the statements of the supervisors of registration, and that the returning-officers should from said statements canvass and compile the returns of the elections in duplicate; that one copy of such returns should be filed in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal, and such other newspapers as they may deem proper, declaring the names, &c., of persons elected, &c., and said board was vested with full authority to examine the truthfulness of the returns, and reject or accept the same, should it appear that a sufficient number of the qualified electors entitled to vote at any poll or voting-place were refused the right of franchise unlawfully, so as to materially change the result of the election; and this defendant further says that the law on the subject of elections, under and by which the said board of returning-officers was created and came into existence, was repealed, and ceased to be the law of Louisiana by an act of the legislature of Louisiana approved the twentieth day of November, 1872, which said act went into operation on the day of its passage, and the said returning-board ceased then and thereby to exist.

And this defendant, further answering, saith, that it is not true, as charged in said bill of complaint, that the said board was reduced by the ineligibility of P. B. S. Pinchback and T. C. Anderson to this respondent as governor, Francis J. Herron as secretary of state, and John Lynch; and that said board, so constituted, and being a majority of said board, did fill the vacancies therein by the election of Jacob Hawkins and James Longstreet; and that said board was properly organized to proceed to said canvass of said returns; and that they, the said Herron, Hawkins, and Longstreet, were duly sworn according to law, and qualified to act as members of said board; but the fact is that the said Herron was not secretary of state of the State of Louisiana at the time alleged, he having been removed from the temporary discharge of the duties of secretary of state by the act of this respondent for good and sufficient cause thereto moving, the said Herron being a defaulter to the State of Louisiana, and incapable of holding office therein, as will appear by the proclamation thereof, now on file in this case, and Jack Wharton, one of

the defendants in this suit, was then discharging the duties of secretary of state, in possession of that office; that no election or selection of the said Hawkins or Longstreet, or either of them, as members of said board, was made in the presence of this respondent, nor were they, or either of them, voted for in his presence, or put to the vote as members of said board; and the said Herron not being the secretary of state of Louisiana, did not form one of a board to select or elect members of said returning-board. And this respondent denies that said Herron, or Longstreet, or Hawkins was ever legally and properly organized and qualified as returning-officer under any election law of Louisiana. This defendant, further answering, saith, that this respondent as governor of the State, Jack Wharton as discharging the duties of secretary of state, and John Lynch composed the board of returning-officers under the law of Louisiana until that law was repealed; that under said law, as it then existed, the said members of said board met at New Orleans on the 13th day of November, 1872, and on the motion of this respondent, in the presence of said John Lynch, this respondent and said Jack Wharton, acting in their aforesaid capacities as governor and secretary of state, voted for the selection of F. H. Hatch and Durant Da Ponte as members of said board, and they were then and there legally elected and qualified as members of said board; that after the election and qualification of said Hatch and Da Ponte, in the presence of said John Lynch, the said Lynch withdrew from the said meeting and went off with said F. J. Herron, and they, the said Lynch and Herron, fraudulently, illegally, and improperly conspired with the said Jacob Hawkins, James Longstreet, and William P. Kellogg, the complainant, did set up a pretended board of returning-officers, and claimed the right to act as such, contrary to law, and right, and justice, for the purpose of obtaining the returns from the several voting-precincts in the State, with a view of altering, destroying, and rejecting the same so as to conceal the true result of said election, defeat the true intent of the voters of the State, by fraudulently declaring the election of the said Kellogg as governor, and the election of others, their friends, to other offices, and in furtherance of this conspiracy, and to defeat the ends of justice and the voice of the people, the said Lynch, styling himself as president, and the said Longstreet, styling himself one of the members of the board of returning-officers, demanded of this respondent the returns from the various precincts of the State, and in the still further pursuance of the said conspiracy and fraud, the present suit was brought.

And this defendant, further answering, saith, that it is not true as charged in said bill of complaint that this respondent, "claiming to be in possession of the returns of a large number of the supervisors of registration, refused to open said statements of the supervisors of registration in the presence of said returning-officers, being influenced in said refusal, as your orator believes, by the fear that said returning-board would make due and proper investigation of the truthfulness of said returns and statement, and that said scheme for excluding lawful ballots would be defeated, or that evidence of the frauds that had been committed, and of the fact that a large number of persons had at such election offered to vote, and had been denied the right to vote, contrary to the Constitution and laws of Congress, would be discovered and preserved in such form that the same could be used, and of avail in any action or proceeding instituted by your orator to determine his right to the office of governor of said State, but the said Henry C. Warmoth made frivolous excuses for not discharging his said duty, and said board of returning-officers adjourned until the next day without any fur-

ther action, when, in order to cover up and conceal said frauds, and to prevent the proper legal canvass of said votes, the said defendant Henry C. Warmoth, without any legal authority or color of law, pretended to eject the said Francis J. Herron from the office of secretary of state, and with force and arms attempted to take forcible possession of the records and archives of the office of secretary of state into his custody, and without warrant or color of law pretended to appoint the said defendant Jack Wharton to the office of secretary of state, and that the said Jack Wharton, willing to aid in such unlawful scheme, pretended to be secretary of state, and as such, a member of said returning-board; that the said defendant Henry C. Warmoth, thereupon pretending that he had conferred the office of secretary of state on said Wharton, combined with said Wharton, and they together pretend to have elected as members of said returning-board the said defendants Frank H. Hatch and Durant Da Ponte, and that although they and all of them were well aware that all said actings and doings were in all respects fradulent, and in violation of law, and that none of said defendants, except the said defendant Warmoth, had any colorable right to proceed to the canvass of said statements, certificates, or returns, and that he, the said Warmoth, had no right to open or submit the same to any persons other than the said Lynch, Hawkins, Longstreet, and Herron, yet the said defendants Warmoth, Wharton, Hatch, and Da Ponte, in order to aid in such scheme of fraud, pretend to be a lawful returning-board; that the said defendant Warmoth, as your orator is informed and believes, while refusing to open and deliver said statements, certificates, and returns to said legal returning officers, who were organized and in actual session, has in fact opened and submitted the same to said conspirators and intruders, excluding said lawful returning-officers from any canvass; that your orator believes and, therefore, avers the fact to be that it is the intention and deliberate plan of the said defendants aforesaid, pretending to act as returning-board as aforesaid, to make such pretended canvass of said votes as shall effect an apparent defeat of your orator and declare the said McEnery elected as governor of said State; that to produce said result they will give effect to all such fraudulent certificates and returns as tend to produce such an effect, and tend to exclude from all consideration, count, or canvass all votes of persons of color that have been suppressed or prevented from being cast, and that it is their intention by such frauds to deliver to the pretended secretary of state such certificate or return, or pretended result of their canvass, as will make it appear that your orator is defeated, and the said McEnery elected; and that while their canvass or return, as your orator is informed, would be perfectly void in law, yet the same would embarrass, hinder, and delay him in the prosecution of legal proceedings in this honorable court to establish his rights to said office, to which he verily believes he is justly entitled, and to which he has been legally elected; that he is informed and fears that it is the intention of the said pretended returning-board, in furtherance of their said scheme, also to destroy all of said returns or certificates received from supervisors of registration, and thereby suppress and place beyond the reach of your orator evidence which will be important and indispensable in a prosecution of legal proceedings to establish his right to said office; that he verily believes that it is the intention of the said defendant Warmoth to place all said certificates and returns of supervisors beyond the reach of the regularly constituted board of returning-officers, and thereby deprive your orator of any legal official canvass of said votes, and of the

evidence that a just, honest, and truthful canvass of said votes would furnish, tending to show his right to said office of governor."

This defendant, answering, saith, that it is not true, as charged in said bill of complaint, "that the said defendant, McEnery, is cognizant of said plans and schemes and approves the same, and is willing to aid in its accomplishment by pretending to believe that the result of such pretended canvass, if thereby it is made to appear that he has received a majority of the votes cast at said election, would confer on him the right to said office, and that your orator believes it is the intention of said defendants to make a sham and fraudulent return and count, declaring the said McEnery elected, and publish the same in the official journal of said State, the New Orleans Republican, printed and issued by the said defendant, the New Orleans Republican Printing Company."

This defendant, further answering, saith, that it is not true, as charged in said bill of complaint, "that the complainant has reason to fear, and does fear, that the said defendants, pretending in the unwarranted manner aforesaid to act as a board of returning-officers, will mutilate, alter, and change said certificates in furtherance of their plan of fraud, and that the original certificates, returns, and statements of the supervisors of registration are important and necessary, and should be preserved in order to determine whether the same have been changed, altered, or tampered with, or suppressed or considered, and in order that his right to said office of governor may not be impaired, and by the destruction of evidence rendered impossible to be asserted by the proper action when the time for the institution of such action shall arise;" but the said charge is groundless to the knowledge of the complainant, and made in furtherance of the conspiracy entered into and existing between the complainant, the said Lynch, Herron, Hawkins, and Longstreet, and their confederates in politics.

This defendant, further answering, saith, that it is not true, as charged in said bill of complaint, "that by the means aforesaid, and in the manner aforesaid, the said Henry C. Warmoth, governor of said State, by wholly and totally disregarding the laws thereof, and in defiance of law, and with the intent to destroy and overthrow a republican form of government in said State, has in fact directed the whole machinery of the State, and all of the officers therein under his control, with the purpose and intent of defeating a just and fair election, and an honest and true return thereof, in order to defeat your orator, well knowing that your orator, if a just and fair election had been had, and held, and a true, honest, and fair canvass of the votes cast at such election made, was legally elected to the office of governor of said State; and the said Warmoth has endeavored, and is endeavoring, with the aid of all of said defendants, to suppress and destroy all evidence of such fraud so completely that the same may be of no avail to your orator in asserting his right to said office; that unless the said defendants are restrained by the order of this honorable court, and are permitted to continue in said unlawful acts, your orator fears that his means of legally establishing his right to said office of governor will be placed beyond his reach and control long before the time when by law he can commence the proper judicial proceedings to determine and enforce his title and right to said office."

This defendant, further answering, saith, that it is not true, as charged in said bill of complaint, that the said complainant "verily believes the actings and doings of the said defendants, as herein set forth and complained of, are in all things unlawful, and are conceived and carried on

by said defendants for the sole purpose of overthrowing and subverting the republican form of government, guaranteed to the State of Louisiana by the Constitution of the United States. That said object is intended to be accomplished by depriving the said people of said State of the choice of its officers, by fraudulently disregarding the right of the duly elected officers of said State of the right to administer the offices of said government, and substituting by fraud and false certificates, and evidences, and canvass, persons who have never been elected to positions of trust and office in said State, and to confirm said pretended title to office by destruction of the evidence of the actual vote cast at said election; and that your orator believes that unless your honors immediately allow, on the filing of this bill, a restraining order restraining the said defendants, and each and every one of them, from doing the acts for which your orator herein prays they may be restrained, your orator fears that before the hearing and determination of a motion for an injunction, the said defendants will have completed their unlawful scheme of fraud, and will have destroyed proof upon which your orator must rely to support his legal right to the office of governor as aforesaid, and your orator will be defeated thereby;" but the said charge is made in furtherance of the conspiracy between said complainants, the said Lynch, Herron, Longstreet, Hawkins, and their associates, for the purpose of getting possession of the election-returns, and defeating the true vote of the people.

This defendant, further answering, saith, that he has answered every charge of the said bill of complaint with the true intent of admitting, explaining, or denying the same according to the truth. And he now denies each and every charge or insinuation in the said bill of complaint, that does or intends to charge him with fraud, or an improper design, or by an act or intention, by preconcert, pre-arrangement, concert, arrangement, or design to deprive any legal voter of the State of Louisiana of the right to cast his vote for the candidate of his choice; he denies that he ever made an arrangement to control the registrars, or assistant registrars, or commissioners of election, or any other person (to do any wrong of any kind) in reference to said election, or the returns thereof. He denies that he appointed them with a view to defeat the election of the complainant, who was nominated for the office of governor on the —— day of July, 1872, and who at the time of his nomination, and ever since, and now is a Senator of the United States and ineligible to the office of governor of this State. And this defendant denies that the complainant has any interest in the result of said election of the fourth of November, 1872, or can profit by the result of the same, and this defendant furthermore denies that this court has jurisdiction of the subject-matter of this suit, or that it can render any judgment, order, or decree in the premises. And this respondent furthermore denies that your honors have any right to investigate the question of whether the complainant has or has not been elected governor of the State of Louisiana, in the manner and for the purposes set forth in said bill of complaint.

And the defendant, further answering, saith, that one Geo. E. Bovee was duly elected secretary of state of the State of Louisiana, at the general election held in the year 1868, was qualified, commissioned, and took possession of said office. That in August, 1871, this respondent for good and sufficient cause suspended the said Bovee from the exercise of the functions of his office, and appointed and commissioned the said Francis J. Herron to discharge the duties of secretary of state, and the said Herron is estopped from denying the right of this respond-

ent to remove him from the performance of the duties of said office of secretary of state of Louisiana; and this defendant denies all and all manner of unlawful combination and confederacy wherewith he is charged by the said bill, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein, and hereby, well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs, and charges in this behalf most wrongfully sustained.

H. C. WARMOTH.

SEMMES & MOTT, *of Counsel.*

H. C. Warmoth swears that the facts, statements, and averments of the foregoing answer in chancery are true.

H. C. WARMOTH.

Sworn to and subscribed before me this 25th day of November, 1872.

F. A. WOOLFLEY,
United States Commissioner.

Affidavit of Jack Wharton, F. H. Hatch, and Durant da Ponte.

Offered by defendants November 25, 1872.

United States circuit court, district of Louisiana. William P. Kellogg *vs.* H. C. Warmoth. No. 6830.

Personally appeared Jack Wharton, F. H. Hatch, and Durant Da Ponte, defendants in the above-entitled suit, who being sworn, depose and say that it is not true, as charged in the bill of complaint filed in the said case, nor is it true in any way or sense whatever, that these deponents have been guilty of any combination or fraud; or that they have in any way illegally and improperly attempted or endeavored to defeat the election of the complaint, or to deprive any legal elector of the right to register or vote at the late election in Louisiana, nor have they, or either of them, attempted or endeavored to make any false count or return of the votes cast at said election, nor have they, or either of them, ever conspired with any person, or agreed to aid any person in making a false count or return of the votes cast at said election, nor have they, or either of them, conspired to reject any votes or returns of said election, with the design or intent of changing the result of said election, and when selected and elected as members of the board of returning-officers they severally accepted said membership with the intention to act honestly and truly in the discharge of their said duties.

F. H. HATCH.
JACK WHARTON.
DURANT DA PONTE.

Sworn to and subscribed before me this 25th day of November, 1872.

F. B. VINOT,
United States Commissioner.

Sworn to and subscribed before me this 25th day of November, 1872.

K. LOEW,
United States Commissioner.

APPENDIX.

EXHIBIT 1.—(Filed with bill.)

Form of affidavit to be used whenever any person has been prevented from depositing his vote by any illegal or wrongful means of the commissioners of election.

[NOTE.—If any legal voter has been prevented from casting his vote, from any cause, fill out the following affidavit and deliver same to United States supervisor of the poll where he would have cast his vote, who will return same to F. A. Woolfley, chief supervisor.]

STATE OF LOUISIANA, *Parish of St. Tammany:*

On the 4th day of November, 1872, I, Richard Waddle, a duly qualified voter in the parish of St. Tammany, presented myself at the polling-place located at Covington, in said parish, which had been designated by the supervisor of registration as a poll, and offered to perform all acts required to entitle me to vote, and was prepared to exhibit to the commissioners of election at said poll a certificate of registration furnished me during the registration of October, a copy of which is attached, showing me to be entitled to vote in the aforesaid parish. I further state that, owing to the illegal acts of the commissioners of election, I was deprived of my right to vote as a citizen and legal voter, to wit: Required by the State supervisor to furnish three qualified voters before he could register him.

[NOTE.—Here state means used in preventing the voter from voting.]

I further state that I was prepared to offer and should have offered to the commissioners of election at said poll for deposit in the ballot-box the ballot hereunto attached, had I not wrongfully been prevented by the illegal acts of the aforesaid commissioners from so doing, and that the wrongful acts or omissions of said commissioners to receive and deposit my ballot, to be counted, is a denial of my rights as a citizen under the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870. I further demand that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

his
RICHARD + WADDLE.
mark.

[Ballot attached.]

Regular national republican ticket—election November 4, 1872.

For President, General U. S. Grant. For Vice-President, Henry Wilson.

Presidential electors.

At large, M. F. Bonzano, Jules Lanabere, Chas. E. Halstead. 1st district, L. C. Rondanez. 2d district, A. K. Johnson. 3d district, Milton Morris. 4th district, Joseph Taylor. 5th district, John Ray.

State ticket—election November 4, 1872.

For governor, Wm. Pitt Kellogg. For lieutenant-governor, C. C. Antoine. For auditor of public accounts, Charles Clinton. Secretary of state, P. G. Deslonde. Attorney-general, A. P. Field. Superintendent of public education, W. G. Brown. Congress at large, P. B. S. Pinchback. For 43d Congress, J. H. Sypher. For judge, 6th judicial district, W. B. Kemp. District attorney, 6th judicial district, F. M. Bankston. For senator 11th senatorial district, E. F. Herwig.

Parish ticket of St. Tammany.

Parish judge, Hiram Newell. Sheriff, Wm. Tally. Recorder, Gustave Dupart. Clerk of court, F. E. Guedry. Coroner, Thomas Badeaux. House of representatives, A. J. Cousin. Police jurors. 1st, Henry Heiser; 2d, J. E. Smith; 3d, F. Roquet; 4th, Louis French; 5th, Fritz Mathis. Justice of the peace, 6th ward, John Davis; 6th ward, Jules Maillie. Constables, Moses Davis, E. R. Shaham.

(Signatures of two witnesses who are cognizant of the truth of the affidavit.)

his
GOSSE + WILLIAMS.
mark.

Subscribed and sworn to this 14th day of November, 1872, before me.

HIRAM NEWELL, *Parish Judge.*

PARISH OF ST. TAMMANY, *November* 4, 1872.

I certify that I was at the polling-place above mentioned on the day of election, November 4, 1872, and that the statement of Mr. Waddle above subscribed to is true in every particular.

WM. A. HUTCHINSON,
United States Supervisor of Election at said poll.

EXHIBIT 2.—(Filed with bill.)

Form of affidavit to be used whenever any person has been prevented from depositing his vote by any illegal or wrongful means of the commissioners of election.

[NOTE.—If any legal voter has been prevented from casting his vote, from any cause, fill out the following affidavit and deliver same to United States supervisor of the poll where he would have cast his vote, who will return same to F. A. Woolley, chief supervisor.]

STATE OF LOUISIANA, *Parish of Orleans:*

On the 4th day of November, 1872, I, Rosamond Thomas, a duly qualified voter in the parish of Orleans, First ward, presented myself at the polling-place located at Constance and Annunciation, in said parish, which had been designated by the supervisor of registration as a poll, and offered to perform all acts required to entitle me to vote, and was prepared to exhibit to the commissioners of election at said poll a certificate of registration furnished me during the registration of 1868, showing me to be entitled to vote in the aforesaid parish. I further state that, owing to the illegal acts of the commissioners of election, I was deprived of my right to vote as a citizen and legal voter, to wit:

That the commissioners alleged that my name did not appear upon the registration list.

[NOTE.—Here state means used in preventing the voter from voting.]

I further state that I was prepared to offer and should have offered to the commissioners of election at said poll for deposit in the ballot-box the ballot hereunto attached, had I not wrongfully been prevented by the illegal acts of the aforesaid commissioners from so doing, and that the wrongful acts or omissions of said commissioners to receive and deposit my ballot, to be counted, is a denial of my rights as a citizen under the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870. I further demand that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

his
ROSAMOND + THOMAS.
mark.

[Ballots attached.]

Regular national republican ticket—election November 4, 1872.

For President, General U. S. Grant. For Vice-President, Henry Wilson.

Presidential electors.

At large—M. F. Bonzano, Jules Lanabere, Charles E. Halstead. First district, L. C. Roudanez; second district, A. K. Johnson; third district, Milton Morris; fourth district, Joseph Taylor; fifth district, John Ray.

State ticket—election November 4, 1872.

For governor, William Pitt Kellogg. Lieutenant-governor, C. C. Antoine. For auditor of public accounts, Charles Clinton. Secretary of state, P. G. Deslonde. Attorney-general, A. P. Field. Superintendent public education, W. G. Brown. Congress at large, P. B. S. Pinchback. For Forty-third Congress, second district, L. A. Sheldon. General assembly—senator fourth district, D. J. Hutchinson; house of representatives, tenth and eleventh wards, Partle Payne, W. H. Decker, R. R. Davis.

Parish ticket, Orleans Parish.

Civil sheriff, C. S. Sauvinet; criminal sheriff, J. L. Herwig. District attorney, F. G. Chamberlain. District judges—First district court, M. A. Dooley; second district court, S. Belden; third district court, E. Mennier; fourth district court, B. L. Lynch; fifth district court, J. W. Gurley; sixth district court, Alfred Shaw; seventh district court, Samuel R. Walker; eighth district court, H. C. Dibble. Clerks of courts—first district court, A. F. Lynd; second district court, F. Pace, jr.; third district court, Charles A. Baquie; fourth district court, Edward De Blois; fifth district court, Joseph

Presas; sixth district court, John Kaiser; seventh district court, J. O. Lainez; eighth district court, Thomas Lynne. Coroner for first, fourth, fifth, and sixth districts, Patrick Creagh. Sixth justice of the peace, Henry Ballard. Constable sixth justice court, Henry Jackson.

City of New Orleans municipal ticket.

Mayor, W. R. Fish. Administrator of finance, Felix Labatut. Administrator of police, C. J. Adolph. Administrator of improvements, James Lewis. Administrator of commerce, C. W. Ringgold. Administrator of public accounts, S. D. Moody. Administrator of assessments, T. Lilienthal. Administrator of water-works, P. Coyle.

(Signatures of two witnesses who are cognizant of the truth of the affidavit.)

Subscribed and sworn to this 4th day of November, 1872, before me.

R. H. SHANNON,
United States Commissioner.

PARISH OF ORLEANS, LOUISIANA, *November* 4, 1872.

I certify that I was at the polling-place above mentioned on the day of election, November 4, 1872, and that the statement of Rosamond Thomas above subscribed to is true in every particular.

_____,
United States Supervisor of Election at said poll.

EXHIBIT 3.—(Filed with bill.)

NOTE.—If the supervisor of registration fails to register a duly qualified applicant as a voter, the following blank affidavit must be made:

STATE OF LOUISIANA, *Parish of Rapides:*

On the 3d day of September, 1872, I, Sam Brown, presented myself at the office of J. G. P. Hooe, supervisor of registration for the parish of Rapides, located at Alexandria, in said parish, of the opening and establishment of which notice had been given by the said officer, and during the legally established office hours, and offered and was prepared to perform all acts and to take all oaths by the laws made prerequisite to entitle me to registration as a voter, and was wrongfully prevented from obtaining registration by said supervisor of registration.

I further state that I am a citizen of the State, and for more than ten days a resident of the said parish of Rapides, and am in all things lawfully qualified and entitled to vote in said parish.

Signed and sworn to, in presence of George Y. Kelso and H. J. Wright.

his
SAM × BROWN.
mark.

Subscribed and sworn to this 4th day of November, 1872, before me.

THOMAS J. SEVERS, *J. P.*

Memorandum.—The foregoing being executed, the voter will present this whole paper to the commissioners of election, on the day of election, and offer to vote in compliance with the provisions of the law below cited. If refused his vote he will execute the following affidavit, and deposit this entire paper with the United States supervisor of election—retaining a copy—who will return to F. A. Woolfley, chief supervisor.

STATE OF LOUISIANA, *Parish of Rapides:*

On the 4th day of November, 1872, I, Sam Brown, a duly qualified voter, in the parish of Rapides, presented myself at the polling-place located at Alexandria, Rapides, in said parish, which had been designated by the supervisor of registration as a poll, and claimed the right to vote upon the foregoing evidence of having offered to do all acts prerequisite to entitle me to register as a voter in said parish, and of having been refused, denied, or unable to obtain registration by J. G. P. Hooe, supervisor of registration.

I further state that I offered to the commissioner of election at said poll for deposit in the ballot-box the ballot hereunto attached, and said commissioner refused to receive said ballot, and illegally and wrongfully prevented the ballot attached from being placed in the ballot-box and counted, to the denial of my right as a citizen and legal voter. I further demand, under the provisions of the act of Congress, entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870, that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

[Ballot attached.]

Regular national republican ticket—election November 4, 1872.

For President, General U. S. Grant. For Vice-President, Henry Wilson.

Presidential electors.

At large, M. F. Bonzano, Sules Lanabere, Charles E. Halstead. First district. L. C. Roudanez. Second district, A. K. Johnson. Third district, Milton Morris. Fourth district, Joseph Taylor, Fifth district, John Ray.

State ticket—election November 4, 1872.

For governor, William Pitt Kellogg. Lieutenant-governor, C. C. Antoine. For auditor of public accounts, Charles Clinton. Secretary of state, P. G. Deslonde. Attorney-general, A. P. Field. Superintendent public education, W. G. Brown. Congress at large, P. B. S. Pinchback. Forty-second Congress, short term, Harry Lott. For Forty-third Congress, Samuel Peters. For district judge, ninth judicial district, John Osborn. For district attorney, N. A. Robinson. For senator, twenty-third senatorial district, George Y. Kelso.

Parish ticket, Rapides Parish.

Parish judge, C. V. Ledoux. Sheriff, John DeLacey. Recorder, V. M. Porter. Coroner, W. H. Shadburn. Clerk of court, William Hustmeyre. House of representatives, Joseph Connaughton, Henry Worthy, John Mayon. Police jurors: First, John Clements; second, William Kelso; third, T. G. Compton; fourth, Jesse Clifton; fifth, M. C. Barbee. Justice of the peace: Alexandria, T. J. Severns; Cotile, Louis Goldman; Pineville, W. L. Gray; Rapides, Henry King; Lamourie, Dawson Allen; Spring Hill, Robert Duke; Cheneyville, Jesse Ford. For constables: Pineville, Jacob Kennedy; Rapides, Jack Josiah; Cotile, John Jackson; Lamourie, Cæsar Morgan; Spring Hill, Turner Wiggins; Cheneyville, David Jones.

his
SAM × BROWN.
mark.

Signatures of two witnesses who are cognizant of the truth of affidavit.
L. J. KENNEDY.
CARTER CARR.

Subscribed and sworn to, this 4th day of November, 1872, before me.
THOMAS J. SEVERNS, *J. P.*

PARISH OF RAPIDES, *November* 4, 1872.

I certify that I was at the polling-place above mentioned on the day of election, November 4, 1872, and that the statement of Sam Brown, above subscribed to, is true in every particular.

J. W. PORTER,
United States Supervisor of Election at said poll.

AN ACT to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes.—Approved May 31, 1870.

* * * * * * *

SECTION 3. That whenever, by or under the authority of the constitution or laws of any State, or the laws of any Territory, an act is or shall be required to be done by any citizen as prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting thereon, be deemed and held as a performance in law of such act, and the person so offering and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act; and any judge, inspector, or other officer of election, whose duty it is or shall be to receive, count, certify, register, report, or give effect to the vote of any such citizen, who shall wrongfully refuse or omit to receive, count, certify, register, report, or give effect to the vote of such citizen, upon the presentation by him of his affidavit, stating such offer and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall, for any such offense, forfeit and pay

the sum of $500 to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just, and shall also, for every such offense, be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than $500, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

* * * * * * *

SEC. 8. That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses committed against the provisions of this act, and also concurrently with the circuit courts of the United States, o all causes, civil and criminal, arising under this act, except as herein otherwise provided, and the jurisdiction hereby conferred shall be exercised in conformity with the laws and practice governing United States courts; and all crimes and offenses committed against the provisions of this act may be prosecuted by the indictment of a grand jury, or, in cases of crimes and offenses not infamous, the prosecution may be either by indictment or information filed by the district attorney in a court having jurisdiction.

* * * * * * *

SEC. 23. That whenever any person shall be defeated or deprived of his election to any office, except elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote of the right to vote on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office; and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote on account of race, color, or previous condition of servitude, such suit or proceedings may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof, so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment of the Constitution of the United States, and secured by this act.

EXHIBIT 4.—(Filed with bill.)

NOTE.—If, after any person has been registered, the supervisor wrongfully strikes the name of such person from the registration list, or if, for any other reason, the vote of a duly qualified voter is refused, fill out the following affidavit, and deliver same to United States supervisor of the poll where the vote was refused, who will return same to F. A. Woolfley, chief supervisor:

STATE OF LOUISIANA, *Parish of Orleans, Seventh Ward:*

On the 4th day of November, 1872, I, Eugene Charles, a duly qualified voter in the parish of Orleans, seventh ward, presented myself at the polling-place located at Frenchman, Seventh ward, in said parish, which had been designated by the supervisor of registration as a poll, and claimed the right to vote; that I exhibited to the commissioner of election at said poll a certificate of registration furnished me during the registration of 1870, a copy of which is attached, showing me to be entitled to vote in the aforesaid parish; that the commissioners alleged that my name did not appear upon the registration list.

NOTE.—Or if the voter has lost his certificate, here state the fact, giving the year it was issued.

I further state that I offered to the commissioners of election at said poll for deposit in the ballot-box the ballot hereunto attached, and said commissioners refused to receive said ballot and illegally and wrongfully prevented the ballot attached from being placed in the ballot-box and counted, to the denial of my rights as a citizen and legal voter. I further demand under the provisions of the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870, that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

[Ballot attached.]

Regular national republican ticket—election November 4, 1872.

For President, General U. S. Grant. For Vice-President, Henry Wilson.

Presidential electors.

At large—M. F. Bonzano, Jules Lanabere, Charles E. Halstead. First district, L. C. Rondanez; second district, A. K. Johnson; third district, Milton Morris; fourth district, Joseph Taylor; fifth district, John Ray.

State ticket.

For governor, William Pitt Kellogg. Lieutenant-governor, C. C. Antoine. For auditor public accounts, Charles Clinton. Secretary of state, P. G. Deslonde. Attorney-general, A. P. Field. Superintendent public education, W. G. Brown. Congress at large, P. B. S. Pinchback. For forty-third Congress, first district, J. H. Sypher. General assembly, third senatorial district, J. A. Massicot; house of representatives, Seventh ward, L. S. Rodriguez, John Barrow.

Parish ticket, Orleans parish.

Civil sheriff, C. S. Sauvinet. Criminal sheriff, J. L. Herwig. District attorney, F. G. Chamberlain. District judges: first district court, M. A. Dooley; second district court, S. Belden; third district court, E. Mennier; fourth district court, B. L. Lynch; fifth district court, J. W. Gurley; sixth district court, Alfred Shaw; seventh district court, Samuel R. Walker; eighth district court, H. C. Dibble. Clerks of courts: first district court, A. F. Lynd; second district court, F. Pace, jr.; third district court, Charles A. Baquie; fourth district court, Edward DeBlois; fifth district court, Joseph Presas; sixth district court, John Kaiser; seventh district court, J. O. Lainez; eighth district court, Thomas Lynne. Coroner, second and third districts, A. Cagnolatti. Fourth justice of the peace, Fred Toebelmann. Constable, fourth justice's court, Jules Gomez.

City of New Orleans, municipal ticket.

Mayor, W. R. Fish. Administrator of finance, Felix Labatut. Administrator of police, C. J. Adolph. Administrator of improvements, James Lewis. Administrator of commerce, C. W. Ringgold. Administrator of public accounts, S. D. Moody. Administrator of assessments, T. Lilienthal. Administrator of water-works, P. Coyle.

his
EUGENE ✕ CHARLES.
mark.

Attest: F. A. W.,
Derbigney, between Saint Bernard and ——— streets. Inquire of John Langhouse, Seventh ward.

(Signatures of two witnesses who are cognizant of the truth of the affidavit.)

Subscribed and sworn to this 4th day of November, 1872, before me.

F. A. WOOLFLEY,
United States Commissioner.

PARISH OF ORLEANS, *Seventh Ward, November* 4, 1872.

I certify that I was at the polling-place above mentioned on the day of election, November 4, 1872, and that the statement of Eugene Charles, above subscribed to, is true in every particular.

———— ————,
United States Supervisor of Election at said Poll.

United States circuit court—In equity.

WILLIAM PITT KELLOGG
vs.
HENRY C. WARMOTH ET AL. } No. 6830.

Filed December 6, 1872.

OPINION OF THE COURT.

This application comes before me under a bill to preserve evidence to enable the complainant to prosecute a suit at law. This bill is well-known to courts of chancery, and is founded upon the statute, being chapter 104 of the second session of the Forty-first Congress, sixteenth Statutes at Large, page 140, entitled "An act to enforce the rights of citi-

zens of the United States to vote in the several States of this Union, and for other purposes," and upon the amendment to the same, being chapter ninety-nine of the third session of the same Congress, sixteenth Statutes at Large, page 433. Section one of the first act cited provides as follows:

That all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school-district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory, by or under its authority, to the contrary notwithstanding.

Section three of the same act provides:

That whenever, by or under the authority of laws of any State, or the laws of any Territory, any act is or shall be required to be done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting therein, be deemed and held as a performance in law of such act. And the person so offering and failing as aforesaid, being otherwise qualified, shall be entitled to vote in the same manner and in the same extent as if he had in fact performed such act.

Section twenty-three provides as follows:

That whenever any person shall be defeated or deprived of his election to any office except elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy any such office and the emoluments thereof shall not be impaired by such denial.

And section fifteen of the amending act provides as follows:

That the jurisdiction of the circuit court of the United States shall extend to all cases in law or equity arising under the provisions of this act, or the act hereby amended, and if any person shall receive any injury to his person or property for or on account of any act by him done, under any of the provisions of this act or the act hereby amended, he shall be entitled to maintain a suit for damages thereof in the circuit court of the United States, in the district wherein the party doing the injury may reside or shall be found.

These two acts were passed by Congress to enforce the provisions of the Constitution of the United States known as the fifteenth amendment, (16 Statutes at Large, page 1131,) which reads as follows:

The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The whole matter involved in the discussion, which has occupied more than a week before me, has been presented on both sides with such ability, research, and fullness that I feel greatly indebted to the solicitors of both the complainant and the respondents for the aid which they have rendered in enabling me to come to an early decision.

The first question to be solved is, are the acts referred to constitutional? Do they fall within the appropriate legislation authorized and imposed as a duty upon Congress by the second section of the amendment? To solve this question we must look to the object proposed to be attained by the amendment. It was to protect all citizens of the United States, including the recently emancipated and enfranchised colored citizens, in the full and free exercise of the right to vote. Nine years previous to the adoption of the amendment, and the enactment of the statutes passed to inforce the same, four millions of those who now constitute the great body of the citizens of the United States were

slaves. It is not necessary here to repeat the history of slavery in this country; how it was, and continued to be, from the very foundation of our Government, a source of internal disquiet, increasing year by year, until it culminated in a most bitter and devastating civil war. The result of that war was the emancipation and enfranchisement of four millions of people, who thus passed rapidly from a state of bondage to the possession of all the civil and political rights of citizens of the United States. It was impossible that so large a body of people should be suffered to remain exposed to the assaults of the prejudice naturally growing out of their former condition without securing to them, through congressional legislation, a free and perfect use of the vote which the fifteenth amendment gave to them as a shield and a sword of protection for their persons, their liberties, and their property.

Congress has legislated and given us the acts referred to as the means most appropriate for effecting the object proposed. These acts have been highly eulogized by the solicitors on both sides, and they seem to me to be most wise and in the highest sense appropriate. It is to be remarked that the fifteenth amendment is most broad in its comprehensiveness. Though called into existence in order to protect the freedman, it protects as well all other citizens, both native and foreign. It would protect the foreigner who had become a citizen should another Know-Nothing excitement agitate the nation, and it would protect the native-born should the foreign-born citizen ever gain in any State or locality an ascendency, and attempt to use that ascendency oppressively. The same may be said of the acts of Congress to give practical effect to the amendment. The provision of the Constitution that no State shall pass a law impairing the obligations of contracts needed no legislation to enforce it, beyond giving the right of review in the Supreme Court of the United States to the party feeling himself aggrieved; but in the case of the fifteenth amendment, the helplessness of the party to be protected rendered a larger and peculiar jurisdiction necessary.

Congress, then, in the acts under consideration, threw around all classes of citizens these effective laws, and secured obedience thereto—first, by criminal punishment; second, by clothing the candidate of the voter with the right to prevent or redress the wrong attempted or perpetrated upon the vote by an appropriate civil action. Now, what are the grievances set forth in this case? What are the allegations made in the bill? They are that 10,000 citizens of this State have been, on account of race, color, and previous condition, deprived of registration, and after due proffer of the right to vote, and that that 10,000 votes, which were in fact cast for the complainant for the office of governor, have been, or are about to be, suppressed by an illegally-constituted board of returning-officers, and that without the interference of this court these votes, both those refused and those cast, which ought to be counted for the complainant, will be lost to him, and that thereby he will be defeated for said office.

These allegations are supported by upward of four thousand affidavits of the actual voters. The chief defendant, namely, H. C. Warmoth, meets this weight of testimony solely by his answer and affidavit; and certain acts done by him since the canvass commenced force upon my mind the belief that his defense rests upon no solid foundation. The further allegation is made that the board of canvassers, legally constituted, are deprived by this respondent of the proper returns, with the view to deprive the citizens of the right to vote. In other words, that the respondent has prevented a fair canvass of the votes by impeding

the legal board and setting up an illegal board. This leads me to consider the facts with reference to these two boards.

By an act of the State legislature of March 16, 1870, the board of returning-officers was made to consist of the governor, lieutenant-governor, secretary of state, Mr. Lynch, and Mr. Anderson. The lieutenant-governor and Mr. Anderson being disqualified on account of having been candidates, the governor, Lynch, and Herron, as a majority of the board, met to fill vacancies. The governor attempted to remove Herron, who was certainly *de facto* secretary of state, who seems to have some sort of judgment in his favor against Bovee, the elected secretary of state, who has for a long period attested all the statutes of the State, and who, without going into his title to the office as against Bovee, was the *de facto* officer clothed with sufficient authority to act as one of the board. The attempt to remove Herron I dismiss with the remark that if all the governor alleges against him had been true, it could have been established only by judicial inquiry, and gave the governor no right to displace him. Herron and Lynch, by a majority vote, filled the vacancies by electing Hawkins and General Longstreet, and these four, together with the governor, are clearly the legal board of returning-officers. Wharton's vote goes for nothing, as he never had any legal status in the board, and with him necessarily fall out Da Ponte and Hatch. Thus it appears that the board which we will call the Herron board, in contradistinction to the Wharton board, is the board which this court feels bound to recognize as having been the legal board at the time this suit was commenced. And this brings me to inquire as to the effect of the approval by the governor of the act of November 20, 1872. The only question before me at this stage of the case connected with the effect of that approval is, did it change in any way the legal status of the Herron board? The act contained a repealing clause, and since it covered the whole subject of the election, and the election cannot be said to be complete until the final counting is concluded, I was at first startled by what seemed to me to be the logical inference of some of the authorities cited by the learned solicitors of the respondents, that if the act of 1870 was at that time repealed, it might vitiate the whole election. But it is not necessary for me to pass upon the question, for, giving the act of November 20 all the force of law, still the Herron returning-board must continue to discharge their duties until their successors are inducted into office. Article 122 of the State constitution of 1868 reads thus:

ART. 122. All officers shall continue to discharge the duties of their offices until their successors shall have been inducted into office, except in cases of impeachment or suspension.

Indeed, the Herron board must finish the canvass of the votes, or a new legislature cannot be legally organized so as to create a board of canvassers in accordance with sections two and forty four of the law of the 20th of November, 1872.

SEC. 2. *Be it further enacted, &c.*, That five persons, to be elected by the senate from all political parties, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning-officers. The returning-officers shall, after each election, before entering on their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning-officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election: so help me God.

Within ten days after the closing of the election said returning-officers shall meet in

New Orleans to canvass and compile the statement of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall at such meeting open, in the presence of the said returning-officers, the statement of the commissioners of election, and the said returning-officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The return of the election thus made and promulgated shall be *prima-facie* evidence in all courts of justice and before all civil officers until set aside after a contest, according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

SEC. 44. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last general assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the general assembly; and it shall be the duty of the said clerk and secretary to place the names of the representatives and senators elect so furnished upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article thirty-four of the constitution of the State.

I see, therefore, no way of avoiding the conclusion that, in any view of the case, the Herron board of returning-officers are still authorized to continue their duties, and are still entitled to the protection of the court.

The court keeps within the acts of Congress and the fifteenth amendment. It does not pretend in any way to make a governor of the State, or in any degree to interfere with the voice of the people expressed through the ballot-box. What it does is to aid in making known the voice of the people, in accordance with sections three and twenty-three of the act of Congress, and with section fifteen of the amendment thereto, and in its action is only a clearly needed adjunct of the legal returning-board. Many propositions were discussed during the argument which it is not necessary for me to now pass upon. It is enough that I find the statute constitutional; that the court has jurisdiction, and that the board of returning-officers, composed of H. C. Warmoth and Messrs. Hawkins, Lynch, Longstreet, and Herron, are the legal board, and as such entitled to the protection of this court.

As to the question of the ineligibility of the complainant in the bill to the office of governor, this question cannot arise under the bill, and could only come before this court in a direct action at law to test the title to the office. It is not, therefore, necessary or proper for me to decide it now; but were it otherwise, I would say that the reason of the thing seems to favor his eligibility, the object of the provision of the constitution being to prevent a man serving two masters and having a divided allegiance. And the fact that, contemporaneously with the adoption of the constitution which first contained this provision, the then territorial governor was by the then constitutional convention made governor of the State provisionally, and at the ensuing election made by the people the first governor of the State, would seem to indicate that the meaning of the inhibition was understood to be as I above stated.

It only remains for me now to make the following order:

Circuit court of the United States, district of Louisiana, in equity.

WM. PITT KELLOGG, COMPLAINANT,
vs.
HENRY C. WARMOTH, JACK WHARTON, Frank H. Hatch, Durant Da Ponte, and John McEnery, and The New Orleans Republican Printing Company, defendants. } No. 6830.—Order entered December 6, 1872.

This cause having come on for hearing on the complainant's motion for writs of injunction *pendente lite*, and for other interlocutory orders prayed for in complainant's bill and amended bill of complaint, and the court having considered the pleadings, affidavits, and exhibits filed in the cause, and having heard counsel as well for the complainant as for said defendants, and the court having considered the premises,

It is ordered—

That the said defendant, Henry C. Warmoth, during the pendency of this cause, be, and he hereby is, until the further order of this court, enjoined, inhibited, and restrained from in any manner, either directly or indirectly, considering or pretending to consider, or canvass any statement, certificate, or return of any supervisor or assistant supervisor of registration, or any office, having any duties to perform about or concerning an election held on the fourth day of November, A. D. 1872, in the State of Louisiana, or relating to any votes or ballots cast at said election, except in the presence of John Lynch, Jacob Hawkins, James Longstreet, and George E. Bovee, a board of returning-officers for said election; and that he do further desist and refrain from submitting or allowing to be submitted, or from aiding or assisting in the submission to the defendants Frank Hatch, Jack Wharton, Durant Da Ponte, or any other person or persons whatsoever, other than the said Hawkins, Bovee, Lynch, and Longstreet, any paper, document, affidavit, statement of votes, return of officers of election, or other proof in any manner relating to said election, and from allowing any other person or persons whatsoever, other than those in this order excepted, whether pretending to act as returning officers, or in any other capacity, to inspect, consider, have access to, canvass, or tamper with any paper, document, affidavit, statement of votes, returns or written proof relating to said election or to the fairness and correctness thereof, that may have heretofore or may hereafter come into his hands or possession, and which, by law, should properly be laid before, submitted to, or considered by such returning-officers of election in making a canvass thereof. And that the said defendant, H. C. Warmoth, be further enjoined and inhibited from altering, suppressing, mutilating, destroying, or secreting any such document, proof, or paper. And that he further desist and be enjoined from in any manner interfering with, obstructing, or hindering the said Lynch, Longstreet, Bovee, and Hawkins, or either of them, from full and complete access to, as well as custody of, all such documents, papers, and proofs relating to said election, as he may or shall have in his possession, custody, or control, or as they shall or may demand, either by refusing to deliver such documents or proofs to them, or either of them, or by any suit or proceeding instituted with the intent to hinder, delay, or obstruct them in the performance of their duty as returning-officers. And that he be further restrained and enjoined from issuing commissions to any persons based upon any calculation, deduction, or pretended canvass of ballots cast at said election, or make, publish, sign, or deposit in the office of the secretary of state, or in any other public office, or

cause to be so deposited, any document, statement of persons elected to any offices or positions of trust at said election, and from giving any effect to the same if already filed and deposited, unless the same be with the concurrent action and lawfully given consent of the said Lynch, Hawkins, Bovee, and Longstreet, or a majority thereof, or of a sufficient number of them to constitute a majority of a board of returning-officers, acting as such returning-officers.

And it is further ordered that the said defendants Jack Wharton, Frank H. Hatch, Durant Da Ponte, and the New Orleans Republican Printing Company, until the final hearing of this cause, or until the further order of the court, be severally and respectively enjoined and restrained to the same extent, effect, and manner as said complainant has in his said bill of complaint prayed they may severally and respectively be restrained. And that writs of injunction in due form of law issue against the said defendants, in accordance with the terms of this order. And that the returning order heretofore issued and allowed in this cause continue in full force and effect, until the court shall otherwise order.

And in order that the evidence relating to said election may be perpetuated and preserved, that it may be of avail upon the hearing of this cause, and in any cause which the said complainant may hereafter be compelled to institute and prosecute to test or determine his right to the office of governor of said State, and in order that public inconvenience may not result therefrom, it is further ordered that the said Henry C. Warmoth do forthwith and without delay deliver unto the said returning-officers, John Lynch, George E. Bovee, Jacob Hawkins, and James Longstreet, each and every paper, document, affidavit, tally-sheet, list, sworn statement, certificate, letter, communication, or proof which he has or may have in his possession, or which may hereafter come into his possession from any supervisor or assistant supervisor of registration or election, or any officer or person, commissioner or commissioners, in any manner concerned in the conduct, control, management, or direction of said election, held on the fourth day of November, A. D. 1872, in any manner relating to said election, or any voting or ballots cast at said election or in any manner relating thereto, in order that they may consider, canvass, and make due return thereof, as required by law; and when the same are no longer required for the purpose of said canvass, it is ordered that the said defendant, H. C. Warmoth, do thereafter immediately file and deposit the same with the clerk of this court, there to remain until true, accurate, and complete attested copies thereof be made by the clerk, subject to the direction of the court.

Injunction.—Issued December 6, 1872.

Circuit court of the United States, fifth circuit and district of Louisiana.

WM. PITT KELLOGG *vs.* HENRY C. WARMOTH, JACK WHARTON, FRANK H. Hatch, Durant Da Ponte, John McEnery, and The New Orleans Republican Printing Company.	No. 6830.

The President of the United States, greeting:

Whereas it has been represented to us in our said circuit court on the part of William P. Kellogg, by his bill of complaint lately exhibited

against you and each of you, touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said above-named defendants, your attorneys, and each of you, are hereby commanded and strictly enjoined under the penalty of the law that you absolutely refrain and desist during the pendency of this cause, until the further order of this court, from in any manner, either directly or indirectly, considering or pretending to consider, or canvass any statement, certificate, or return of any supervisor or assistant supervisor of registration, or any officer having any duties to perform about or concerning an election held on the 4th day of November, 1872, in the State of Louisiana, or relating to any votes or ballots cast at said election, except in the presence of John Lynch, Jacob Hawkins, James Longstreet, and George E. Bovee, a board of returning-officers for said election, or from submitting or allowing to be submitted, or from aiding or assisting in the submission to the said defendants, Frank H. Hatch, Jack Wharton, Durant Da Ponte, or any other person or persons whatsoever, other than the said Hawkins, Bovee, Lynch, and Longstreet, any paper, document, affidavit, statement of votes, return of officers of election, or other proof in any manner relating to said election, and from allowing any other person or persons whatsoever, other than those in this order excepted, whether pretending to act as returning-officers, or in any other capacity, to inspect, consider, have access to, canvass, or tamper with any paper, document, affidavit, statement of votes, return, or written proof relating to said election, or to the fairness and correctness thereof, that may have heretofore or may hereafter come into his hands or possession, and which by law should properly be laid before, submitted to, or considered by such returning-officers of election in making a canvass thereof; and that the said defendant H. C. Warmoth be further enjoined and inhibited from altering, suppressing, mutilating, destroying, or secreting any such document, proof, or paper.

And that he further desist and be enjoined from in any manner interfering with, obstructing, or hindering the said Lynch, Longstreet, Bovee, and Hawkins, or either of them, from full and complete access to, as well as custody of, such documents, proof, or paper.

And that he further desist and be enjoined from in any manner interfering with, obstructing, or hindering the said Lynch, Longstreet, Bovee, and Hawkins, or either of them, from full and complete access to, as well as custody of, such documents, papers, and proofs relating to said election, as he may or shall have in his possession, custody, or control, or as they shall or may demand, either by refusing to deliver such documents or proofs to them, or either of them, or by any suit or proceeding instituted with the intent to hinder, delay, or obstruct them in the performance of their duty as returning-officers; and that he be further restrained and enjoined from issuing any commissions to any persons based upon any calculation, deduction, or pretended canvass of ballots cast at said election, or make, publish, sign, or deposit in the office of the secretary of state or in any other public office, or cause to be so deposited, any document, statement of persons elected to any offices or positions of trust at said election, and from giving any effect to the same, if already filed and deposited, unless the same be with the concurrent action and lawfully given consent of the said Lynch, Hawkins, Bovee, and Longstreet, or a majority thereof, or of a sufficient number of them to constitute a majority of a board of returning-officers.

And it is further ordered that the said defendants, Jack Wharton,

Frank H. Hatch, Durant Da Ponte, and the New Orleans Republican Printing Company, until the final hearing of this cause, or until the further order of the court, be severally and respectively enjoined and restrained to the same extent, effect, and manner as said complainant has in his bill of complaint prayed they may severally and respectively be restrained.

And that writs of injunction in due form of law issue against the said defendants in accordance with the terms of this order.

And that the restraining order heretofore issued and allowed in this cause continue in full force and effect until the court shall otherwise order.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 6th day of December, in the year of our Lord 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Marshal's return.

Received December 7, 1872, by the United States marshal, and on the same day, month, and year served the within-named persons with a copy of this injunction, as follows: On H. C. Warmoth, by handing the same to him in person at the Saint Charles Hotel, in this city; Jack Wharton, same day, month, and year, served the within injunction by handing the same to him in person at the Saint Charles Hotel, in this city; on Durant Da Ponte, same day, month, and year, by handing the same to him in person in this city; on Frank H. Hatch, same day, month, and year, by handing the same to him in person in this city; on the New Orleans Republican, December 9, 1872, by handing the same to W. R. Fish, president of said paper.

C. R. STEELE,
Deputy United States Marshal.

United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 115 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, except entries from the minutes of continuances, &c., in the case of William P. Kellogg *vs.* H. C. Warmoth *et als.*, No. 6830 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3d day of January, A. D. 1873. (Nine words erased. Eight words interlined.) Approved.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

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